

SB 2 (BRADFORD-ATKINS) CIVIL RIGHTS AMENDMENTS EXPLAINED POINT-BY-POINT ANALYSIS OF PORAC'S FALSE ARGUMENTS

SB 2 amends the Bane Act to establish a simple rule: police or sheriffs who violate someone's rights through threat, intimidation or coercion should be accountable in court. SB 2 removes current immunities and court decisions that protect police from civil liability, even when they've broken the law and violated constitutional rights through force, threat, intimidation or coercion.

Law enforcement lobbyists are trying to muddy the waters with claims about SB 2 that are either misleading or downright incorrect. This sets the record straight.

False Claim #1



SB 2 would broaden and unravel The Bane Act – California's landmark 1987 civil rights legislation.

The Truth



This bill does not unravel the Bane Act or expand it beyond what existed prior to its enactment in 1987.

SB 2 restores the Bane Act to its original intent, which was to provide remedy to victims in California State Courts.

False Claim #2



SB 2 would remove the legal requirement that public officials intended to violate a person's civil rights, making public employees liable anytime they make a mistake or someone disagrees with the outcome of a decision and deterring employees from doing their jobs.

The Truth



SB 2 only holds public officials liable for intentional conduct.

The Bane Act, as amended by SB 2, only applies when a public official ***intentionally*** interferes with an individual's civil rights by threat, intimidation, or coercion. SB 2 clarifies that the intent required by the Bane Act is "general intent," meaning that the person intended to perform the act (for example, they intended to fire their gun, rather than having it discharge accidentally). It's the same intent required for liability in nearly all cases.

But because of a 2017 case, proving a Bane Act violation currently requires showing heightened intent known as "specific intent": not only does a person have to prove that the officer violated their Constitutional right to be free of excessive force, they must also "get into the mind" of the officer to prove they *knew* at the time that what they were doing violated the person's rights, and *acted with the intent to deliberately violate the person's rights*.

For example it wouldn't be enough to show that an officer intentionally shot a person and that the shooting was excessive force; a victim would have to show that the officer knew at the time that shooting violated the law and shot anyway because they intended to violate the person's civil rights with excessive force.

Because police seldom announce that they intend to violate the law, requiring specific intent requires "getting into the mind" of the officer in a way that shields police from liability, even when they violate the law, in nearly all instances.

This is precisely what happened to 19-year-old Pedro Villanueva, who was shot and killed by California Highway Patrol Sgt. Henderson. The judge in that case dismissed the Bane Act claim for Pedro Villanueva's killing, holding that the officers did not meet the Bane Act's intent requirement even though one officer aimed at Pedro without identifying himself as a police officer, and witnesses testified that they believed the officer was a carjacker, not police.

Sgt. Henderson fired his gun 12 times, wounding Pedro in the head, neck, and torso. The Court held that Pedro's parents failed to prove that Henderson "intended not only the force, but its unreasonableness" as well. Nowhere in the text or history of Fourth Amendment jurisprudence is this heightened level of proof required. ***This is an utter failure of the law to protect a citizen's civil rights, which SB 2 seeks to correct.***

Because **SB 2 still limits liability to public officials to violate the law through intentional conduct, it does not apply to accidents or simple negligence. It therefore would not affect public employees who simply make a mistake or are "just doing their job."** Instead, SB 2 ensures that public officials who violate someone's rights through ***intentional acts*** of threat, intimidation or coercion can be held accountable in court.

False Claim
#3



If a social worker removes a child from what they believe is an abusive situation, the social worker will face unprecedented liability under SB 2. If a public school teacher holds a class exercise where a student happens to get injured, he or she could be liable under SB 2.

The Truth



These examples are completely inaccurate and false. Neither the social worker nor the teacher in these hypotheticals would be liable.

The Bane Act only provides liability where an official violates someone's rights through intentional "threat, intimidation, or coercion." A teacher who holds a class where a student accidentally gets injured isn't injuring the student through intentional acts, and therefore isn't acting with "threat, intimidation, or coercion." Likewise, a social worker removing a child from an abusive situation is not intentionally violating the child's constitutional right through threat, intimidation, or coercion.

Moreover, California courts have held that social workers' decision to remove a child from a home for abuse is a "discretionary decision" for which Government Code 820.2 provides immunity and which SB 2 does not affect, even where courts have noted that the social worker's decisions turned out to be "lousy." *Christina C. v. City of Orange*, 220 Cal. App. 4th 1371, 1381 (2013). SB 2 would not make social workers liable under the Bane Act for removing children from abusive homes.

False Claim
#4



SB 2's changes to the Bane Act could result in criminal liability for public officials.

The Truth



SB 2's changes to the Bane Act are entirely unrelated to criminal liability, which is in the California Penal Code.

False Claim
#5



SB 2 makes local governments liable without a showing of intent to violate a civil right, which will burden cities and counties with unsustainable legal costs.

The Truth



ALL public employees (including peace officers) have immunity for discretionary acts within the scope of their employment under current law. SB 2 does not alter that immunity in any way.

Public employees cannot be sued for doing their job because California law grants them broad immunity. Gov. Code § 815.2 (b) and 820.2 protects public entities and public employees with immunity and ensures that public employees who exercise discretionary acts within the scope of their employment will remain immune from lawsuits.

False Claim
#6



By expanding Bane Act actions, SB 2 will impose enormous liability costs on local governments

The Truth



SB 2 won't open floodgates of liability. It restores intent requirement to the general intent, as existed before 2017.

And SB 2 only provides an exception for Bane Act actions to three very specific and narrow immunities that apply only peace officers: (1) immunity for peace officers who plant evidence or frame someone (Gov Code 821.6), absolute immunity to entities that injure prisoners (Gov Code 844.6), and peace officer immunity for failure to provide medical care to prisoners in their custody (Gov Code 845.6). [See SB 2, Section 3, subdivision (n).] The bill even specifically states that the exception to these immunities only applies only to peace and custodial officers.

SB 2 will ensure that officers who violate someone's rights through threats, intimidation or coercion can held accountable in court. That's the right thing to do. If municipalities want to reduce liability, they should stop officers from violating people's rights. Providing immunity for officers who violate the law and people's rights isn't the answer.

False Claim
#7



SB 2 will impose liability on police, firefighters, and other public employees, making them think twice before going into situations and making people less likely to enter those jobs.

The Truth



Both under California law and in practice, lawsuit payments for public employee conduct never comes out of employees' pockets, unless a jury finds the officer acted with malice and awards punitive damages.

California **requires** that governments indemnify public officials for any compensatory damages award for acting in the course and scope of liability, and authorizes govts to indemnify officials even for punitive damages awards (which require a finding of actual malice – that the employee specifically acted for the purpose of violating the person's rights).

Professor Joanna Schwartz studied indemnification of officers and found that these statutes effectively insulate officers from financial responsibility in civil rights claims. An excerpt from her findings is below:

"No officer in a California law enforcement agency paid one penny towards a settlement or judgment ... Indeed, in all of the California jurisdictions in my study—and in most of the others as well—officers are more likely to be struck by lightning than they are to contribute to a settlement or judgment in a police misconduct case."

SB 2 is Supported By:

Alliance for Boys and Men of Color;
American Civil Liberties Union/Northern California/Southern California/San Diego
and Imperial Counties;
Asian Solidarity Collective;
Bend the Arc: Jewish Action;
Brotherhood Crusade;
Black Lives Matter Los Angeles;
Anti Police-Terror Project;
California Families United 4 Justice;
PolicyLink;
STOP Coalition;
UDW/AFSCME Local 3930;
Youth Justice Coalition;
California Alliance for Youth and Community Justice;
California Department of Insurance;
California Immigrant Policy Center;
California Public Defenders Association (CPDA);
Californians for Safety and Justice;
Change for Justice;
Children's Defense Fund - CA;
Clergy and Laity United for Economic Justice;
Communities United for Restorative Youth Justice (CURYJ);
Community Advocates for Just and Moral Governance;
Consumer Attorneys of California;
Drug Policy Alliance;
Ella Baker Center for Human Rights;
Empowering Pacific Islander Communities (EPIC);
Equal Rights Advocates;
Fresno Barrios Unidos;
Friends Committee on Legislation of California;
Giffords; Indivisible East Bay;
Indivisible South Bay LA;
Initiate Justice;
Justice Reinvestment Coalition of Alameda County;
Kern County Participatory Defense;
Law Enforcement Accountability Network;
League of Women Voters of California;
Legal Services for Prisoners With Children;
Los Angeles LGBT Center;
Martin Luther King Jr Freedom Center;
Mexican American Bar Association of Los Angeles County;
Mid-city Community Advocacy Network;
National Association of Social Workers,
California Chapter;
National Institute for Criminal Justice Reform;
Nextgen California;
Orange County Emergency Response Coalition;
Organizers in Solidarity;
Pacifica Social Justice;
People's Budget Orange County;
Pillars of The Community;

Prosecutors Alliance of California;
Roots of Change;
Salesforce;
San Francisco Board of Supervisors;
San Francisco Public Defender;
San Jose State University Human Rights Institute;
Santa Monica Coalition for Police Reform;
Showing Up for Racial Justice (SURJ) Long Beach;
Showing Up for Racial Justice (SURJ) San Diego;
Showing Up for Racial Justice North County;
Southeast Asia Resource Action Center;
Smart Justice California;
Team Justice;
The Resistance Northridge Indivisible;
Think Dignity;
Together We Will/indivisible - Los Gatos;
We the People - San Diego;
White People 4 Black Lives;
Yalla Indivisible

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