

Date of Hearing: July 13, 2021  
Counsel: Matthew Fleming

ASSEMBLY COMMITTEE ON PUBLIC SAFETY  
Reginald Byron Jones-Sawyer, Sr., Chair

SB 98 (McGuire) – As Amended June 17, 2021

**SUMMARY:** Allows duly authorized members of the press to enter areas that have been closed by law enforcement due to a demonstration, march, protest, or rally and prohibits officers from citing members of the press for failure to disperse, a violation of a curfew, or a violation of resisting, delaying, or obstructing, as specified. Specifically, **this bill:**

- 1) Allows a duly authorized representative of any news service, online news service, newspaper, or radio or television station or network to enter areas that are closed as command post, police line, or rolling closure at a demonstration, march, protest, or rally where individuals are engaged in activity that is protected pursuant to the First Amendment to the United States Constitution or Article I of the California Constitution.
- 2) States that a peace officer or other law enforcement officer shall not intentionally assault, interfere with, or obstruct the duly authorized representative of any news service, online news service, newspaper, or radio or television station or network who is gathering, receiving, or processing information for communication to the public.
- 3) Prohibits an officer from citing a duly-authorized representative of any news service, online news service, newspaper, or radio or television station or network that is authorized or permitted to be in a closed area for the failure to disperse, a curfew violation, or a violation of resisting, delaying, or obstructing, as specified.
- 4) Provides that if the duly authorized representative is detained by a peace officer or other law enforcement officer, that representative shall be permitted to contact a supervisory officer immediately for the purpose of challenging the detention, unless circumstances make it impossible to do so.
- 5) Specifies that these provisions do not prevent a law enforcement officer from enforcing other applicable laws if the person is engaged in activity that is unlawful.

**EXISTING LAW:**

- 1) Provides that every person who participates in any rout or unlawful assembly is guilty of a misdemeanor. (Pen. Code, § 408.)
- 2) Makes it a misdemeanor for any person to remain present at the place of any riot, rout, or unlawful assembly, after being lawfully warned to disperse. (Pen. Code, § 409.)
- 3) Authorizes specified law enforcement officers to close the area where a menace to the public health or safety is created by a calamity including a flood, storm, fire, earthquake, explosion,

accident, or other disaster. (Pen. Code, § 409.5, subd. (a).)

- 4) Authorizes specified law enforcement officers to close the immediate area surrounding any emergency field command post or any other command post activated for the purpose of abating any calamity or any riot or other civil disturbance to any and all unauthorized persons whether or not the field command post or other command post is located near to the actual calamity or riot or other civil disturbance. (Pen. Code, § 409.5, subd. (b).)
- 5) Makes it a misdemeanor for any person to willfully and knowingly enter an area closed as the result of such a disaster and willfully remain within the area after receiving notice to evacuate. (Pen. Code, § 409.5, subd. (c).)
- 6) Allows a duly authorized representative of any news service, newspaper, or radio or television station or network to enter areas closed as the result of a disaster. (Pen. Code, § 409.5, subd. (d).)
- 7) Authorizes specified law enforcement officers to close the area where a menace to the public health or safety is created by an avalanche. (Pen. Code, § 409.6, subd. (a).)
- 8) Authorizes specified law enforcement officers to close the immediate area surrounding any emergency field command post or any other command post activated for the purpose of abating hazardous conditions created by an avalanche. (Pen. Code, § 409.6, subd. (b).)
- 9) Makes it a misdemeanor for any person to willfully and knowingly enter an area closed due to an avalanche and willfully remain within the area after receiving notice to evacuate; and further authorizes the use of reasonable force to remove any unauthorized person from such an area. (Pen. Code, § 409.5, subd. (c).)
- 10) Allows a duly authorized representative of any news service, newspaper, or radio or television station or network to enter areas closed as the result of an avalanche. (Pen. Code, § 409.5, subd. (d).)
- 11) Makes it a misdemeanor for a person who willfully resists, delays, or obstructs any public officer, peace officer, or an emergency medical technician, as defined, in the discharge or attempt to discharge any duty of their office or employment. (Pen. Code, § 148, subd. (a).)
- 12) Provides that the fact that a person takes a photograph or makes an audio or video recording of a public officer or peace officer, while the officer is in a public place or the person is in a place he or she has the right to be, does not constitute, in and of itself, a violation of resisting, delaying, or obstructing, nor does it constitute reasonable suspicion to detain the person or probable cause to arrest the person. (Pen. Code, § 148, subd. (g).)
- 13) Requires the Commission on Peace Officer Standards and Training (POST) to implement a course or courses of instruction for the training of law enforcement officers in the handling of acts of civil disobedience and adopt guidelines that may be followed by police agencies in responding to acts of civil disobedience. (Pen. Code, § 13514.5, subd. (a).)
- 14) Requires the POST training course to include adequate consideration of all of the following subjects:

- a) Reasonable use of force;
  - b) Dispute resolution;
  - c) Nature and extent of civil disobedience, whether it be passive or active resistance;
  - d) Media relations;
  - e) Public and officer safety;
  - f) Documentation, report writing, and evidence collection; and,
  - g) Crowd control. (Pen. Code, § 13514.5, subd. (b).)
- 15) Provides that any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect the arrest, to prevent escape or to overcome resistance. (Pen. Code, § 835a.)
- 16) Specifies that a peace officer who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance. (Pen. Code, § 835a.)

**FISCAL EFFECT:** Unknown.

**COMMENTS:**

- 1) **Author's Statement:** According to the author, "When natural disasters such as earthquakes or wildfires occur, state law authorizes peace officers to close certain areas to the public during emergencies, but authorized members of the press are granted unique exemptions from these restrictions, as press provide information to the public on what is going on. Members of the press often need to put themselves in harm's way in order to evaluate the scene of an emergency and report.

"Currently, members of the press are not allowed to interfere with, hinder, or obstruct emergency operations. Restrictions on media access may be imposed for only so long and only to such extent as is necessary to prevent actual interference. While California law protects members of the press from being stopped when entering closed areas during emergencies and natural disasters to gather information, these protections don't extend to protest events such as demonstrations, marches, protests, or rallies where individuals largely engage their First Amendment right to speech.

"In California and across the country police have arrested, detained, and have physically assaulted journalists with rubber bullets, pepper spray, tear gas, batons, and fists. In many cases there are strong indications that the officers injuring journalists knew their targets were members of the press. Members of the press risk their personal safety and wellbeing each time they attend protest events to get the public the information they need, but rubber bullets,

teargas, and even arrest cannot be the norm for an essential pillar of our democracy. We must take steps to ensure that the right of the press and the First Amendment are protected here in the Golden State.

“SB 98 will ensure that journalists’ ability to perform their critical role of documenting history and informing the public is protected as they attend demonstrations, marches, protests, and rallies. SB 98 will prohibit law enforcement officers from obstructing, detaining, assaulting or otherwise preventing the press from fulfilling their constitutional mandate in relaying information regarding these events.”

- 2) **Law Enforcement and Crowd Control:** The basic course of training for law enforcement officers includes training in handling disputes and crowd control (POST website, <https://post.ca.gov/regular-basic-course-training-specifications>, [as of June 28, 2021].) The training topic is broken down into crowd management, crowd control, and riot control. In addition, under Penal Code Section 13514.5, POST is required to provide a supplemental course of training for officers in civil disobedience situations. This training includes instruction on the use of force as well as media relations in organized protest situations.

The POST training on crowd control situations, and other available law enforcement training materials on the same subject, were recently analyzed by an advisory group to the Governor. (Glaser, Review of Research on Policing Demonstrations, July 28, 2020, pp. 3 – 8, available at: <https://www.gov.ca.gov/wp-content/uploads/2020/10/Policing-and-Protests-Recommendations.pdf>, [as of July 1, 2021].) The advisory group concluded that the materials acknowledge many of the challenges of policing protests, introduce the idea that crowds are heterogeneous and not inherently prone to violence, and provide clear operational guidance. (*Id.* at 8.) The advisory group criticized the training materials for failing to reflect systematic research on crowd behavior in general and policing protests in particular. (*Ibid.*)

The rules for when and what type of force law enforcement can use in crowd control situations is defined by case law and local policy. In general, when courts are evaluating whether or not a specific use of force was lawful or not, they will attempt to balance the “nature and quality of the intrusion on the individual” against the “countervailing governmental interests at stake” and make a determination about whether the use of force was reasonable under the circumstances. (*Graham v. Connor* (1989) 490 U.S. 386, 396.) The decision about whether or not the use of force is “reasonable,” and therefore lawful, must take into account “the fact that police officers are often forced to make split-second judgments -- in circumstances that are tense, uncertain, and rapidly evolving.” (*Id.* at 396-97.)

For example, in *Deorle v. Rutherford* (9th Cir. 2000) 272 F.3d 1272, 1286, the court found that an officer shooting a beanbag round into the face of a mentally disturbed person without warning was unreasonable. The officer arrived on the scene and was able to observe the individual from a distance prior to firing the less-lethal beanbag round, which weighed against the notion that the officer had to make a split second decision to use less-lethal force. (*Ibid.*) By contrast, in *Forrester v. City of San Diego* (9th Cir. 1994) 25 F.3d 804, the court held the use of “pain compliance” techniques to be reasonable to disperse a group of protestors. Prior to applying the pain compliance techniques, the officers warned the demonstrators that they would be subject to pain compliance measures if they did not move,

that such measures would hurt, and that they could reduce the pain by standing up, eliminating the tension on their wrists and arms. (*Id.* at 806.)

- 3) **Police Confrontations with the Media:** The genesis of this bill is the use of force when it is applied to journalists who are attempting to provide news coverage of protests, marches, demonstrations, etc. Numerous Black Lives Matter Protests have occurred following the killing of George Floyd, and other African Americans by police officers. The United States Press Freedom tracker indicates that from May 2020 to May 2021, there were over 600 aggressive acts by officers against journalists. (U.S. Press Freedom Tracker website, available at: <https://pressfreedomtracker.us/>, [as of June 28, 2021].) The website contains links to various incidents in the state of California, including one protest in Los Angeles where police allegedly used force against at least four journalists in separate instances. (*Multiple journalists covering protests in Los Angeles assaulted*, U.S. Press Freedom Tracker, available at: <https://pressfreedomtracker.us/all-incidents/multiple-journalists-covering-protests-los-angeles-assaulted/>, [as of June 28, 2021].)

This bill would add several protections for journalists into state law. First, it would clarify that “duly authorized members of the press” have access to areas that have been closed by the police due to a protest, march or other type of demonstration. It further instructs that journalists are not to be assaulted, interfered with, or obstructed during their coverage of such demonstrations. In addition, this bill would provide journalists with immunity from specified violations such as remaining after an order to disperse, curfew violations, and resisting arrest offenses.

- 4) **SB 629 of the 2019 – 2020 Legislative Session and the Governor’s Veto Message:** SB 629 (McGuire) of the 2019 – 2020 Legislative Session was substantially similar to this bill. It had a somewhat broader definition of who constituted media for purposes of the bill, in that it defined a “duly authorized representative of a news service” to include anyone who appears to be gathering news and who produces a press credential as well as anyone carrying professional broadcasting or recording equipment. This gave rise to criticism that the bill was drafted too broadly, in that a person with an iPhone and an internet blog could possibly qualify as a duly authorized representative. This bill has removed that language and made some other minor changes.

In his veto message, Governor Newsom stated the following in regards to SB 629:

“This bill would allow authorized representatives of any news service, online news service, newspaper, or radio or television station or network to enter areas that have been closed by law enforcement due to a demonstration, march, protest or rally, including the immediate area surrounding any emergency field command post or any other command post. This bill would, additionally, prohibit a peace officer from intentionally assaulting, interfering with or obstructing these duly authorized representatives who are gathering, receiving or processing information for communication to the public.

“Media access to public gatherings - especially protests - is essential for a functioning democracy, and law enforcement should not be able to interfere with those efforts. But I am concerned that this legislation too broadly defines a ‘duly

authorized representative of a news service, online news service, newspaper, or radio or television station or network.’ As written, this bill would allow any person who appears to be engaged in gathering, receiving or processing information, who produces a business card, press badge, other similar credential, or who is carrying professional broadcasting or recording equipment, to have access to a restricted law enforcement area. This could include those individuals who may pose a security risk - such as white nationalists, extreme anarchists or other fringe groups with an online presence.

“Law enforcement agencies should be required to ensure journalists and legal observers have the ability to exercise their right to record and observe police activities during protests and demonstrations. But doing so shouldn't inadvertently provide unfettered access to a law enforcement command center. In fact, the police reform advisors that I appointed in the wake of the nationwide protests this summer to advise me on what more California can do to protect and facilitate the right to engage in peaceful protests and demonstrations made concrete recommendations on protecting journalists and legal observers exercising their right to record and observe police activities during protests and demonstrations. I plan to implement these recommendations at the state level and am encouraging every California law enforcement agency to do the same. I also plan to work with the Legislature on providing access to journalists in a way that addresses the security concerns and accomplishes the intent of this bill.”

This bill is the second iteration of SB 629. This time around, the language expanding who would qualify as “a duly authorized representative of any news service, online news service, newspaper, or radio or television station or network” has been removed. This bill, unlike SB 629, is analogous to existing law in terms of who would qualify as media for purposes of its access and protection provisions. (*See e.g.* Pen. Code, § 409.5, subd. (d).) In that sense, this bill appears to respond to the Governor’s veto message by using a definition that is narrower than the one advanced in SB 629.

This bill does not appear to address the other concerns stated by the Governor in his veto message. Specifically, there have been no changes to address the worry about the extent of access to sensitive law enforcement areas, and there does not appear to be any significant overlap between this bill and the Governor’s Policing and Protests Recommendations. (*See* Glaser, *supra*.) In regards to access, the author submits that case law adequately addresses ant potential problems that may arise. (*See e.g. Leiserson v. City of San Diego* (1986) 184 Cal.App.3d 41, 51 (holding that existing law with language that is substantially similar to this bill means that “press representatives must be given unrestricted access to disaster sites *unless* police personnel at the scene reasonably determine that such unrestricted access will interfere with emergency operations.” (*emphasis added*).) The author’s staff has also stated that they are continuing to work with the Governor’s office to address any lingering concerns about the bill.

- 5) **Argument in Support:** According to the *California News Publisher’s Association*, *California Black Media*, *ImpreMedia*, *Ethnic Media Services*, the *California Broadcasters Association*, *ACLU California Action*, and the *First Amendment Coalition*: “In order to protect members of the media who are often responsible for the first draft of history, SB 98 would: ensure an authorized member of the media may enter areas closed off by first

responders during a demonstration, march, protest or rally; prohibit an officer from assaulting a journalist or obstructing their ability to gather or process news; and create an accelerated process for a journalist to challenge being detained by an officer.

“Recent actions taken against journalists by law enforcement officers demonstrate that additional statutory protections are necessary to allow reporters and photographers to gather and process information and report on the significant events that are transforming and reshaping our world.

“In California and across the country police have arrested, detained, and have physically assaulted journalists with rubber bullets, pepper spray, tear gas, batons, and fists. In many cases there are strong indications that the officers injuring journalists knew their targets were members of the press.

...

“The right of the press to document police activity is foundational to our democracy and has long been recognized and protected by the courts. News reporting on police conduct serves the crucial First Amendment interest in promoting the “free discussion of governmental affairs.” *Mills v. Alabama*, 384 U.S. 214, 218 (1966). Further, the ability journalists to cover people exercising their First Amendment to petition the government and assemble is crucial to continuing a dialog on the difficult issues our society faces.

“In a turbulent and troubled time and with an abundance of misinformation flooding information channels, journalists need to be able to gather and report facts without having to fear that they will be shot at or arrested by law enforcement officers simply because they are trying to provide context and help us all understand the significance of these events.

“Police attacks on journalists are what we expect from third world countries. SB 98 would make clear that it is the policy of this state that assaults and obstructions designed to prevent the constitutionally protected free flow of information to Californians will not be tolerated.”

- 6) **Argument in Opposition:** According to the *California Statewide Law Enforcement Association*: “While we certainly understand the need to protect the media during protests, SB 98 has unintended consequences that could put officers and the public in danger. By granting the media access to emergency command posts, they will have access to field tactics our command post officers are communicating to the officers on the ground. Should that information be leaked to the public, it could prevent our officers from diverting crowds to safe locations or even worse, provide suspects with pertinent information to aid in the commission of a crime. We appreciate the recent amendments that require permission from the commanding officer; however, we remain opposed until it is further clarified that a peace officer is allowed to remove the reporter for willful interference with a response.”
- 7) **Related Legislation:** AB 48 (Gonzalez) would prohibit the use of kinetic energy projectiles or chemical agents, as defined, by any law enforcement agency to disperse any assembly, protest, or demonstration, except in compliance with specified standards. AB 48 is pending in the Senate Public Safety Committee.

**8) Prior Legislation:**

- a) AB 629 (McGuire), of the 2019 – 2020 Legislative Session, was similar to this bill. SB 629 was vetoed by Governor Newsom.
- b) AB 392 (Weber), Chapter 170, Statutes of 2019, revised the standards for use of deadly force by peace officers.
- c) AB 230 (Caballero), Chapter 285, Statutes of 2019, required law enforcement agencies to maintain a policy that provides guidelines on the use of force, utilizing de-escalation techniques and other alternatives to use of force, specific guidelines for the application of deadly force, and factors for evaluating and reviewing all use of force incidents.
- d) SB 411 (Lara), Chapter 177, Statutes of 2015, provided that taking a photograph or recording a law enforcement officer while the officer is performing any official duty in a public place or in a place where the person has a right to be does not constitute the offense resisting, obstructing, or interfering.
- e) SB 1844 (Thompson), Chapter 207, Statutes of 1998, required the Commission on Peace Officer Standards and Training (POST) to implement a course for training peace officers to deal with civil disobedience, including reasonable use of force, active and passive resistance, media relations, officer safety, evidence collection and crowd control.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

ACLU of California  
Asian American Journalists Association, Los Angeles  
Asian American Journalists Association, Sf Bay Area  
California Black Media  
California Broadcasters Association  
California Federation of Teachers Afl-cio  
California News Publishers Association  
California Public Defenders Association  
California Public Defenders Association (CPDA)  
Californians Aware: the Center for Public Forum Rights  
Ccnma: Latino Journalists of California  
Communications Workers of America, District 9  
Ethnic Media Services  
First Amendment Coalition  
IBEW Local 45  
Journalism and Women Symposium, Southern California (jaws Social)  
LA Opinion  
Los Angeles County  
Los Angeles Press Club  
Media Alliance



Media Guild of The West, Newsguild-cwa Local 39213  
National Association of Black Journalists of Los Angeles  
National Association of Hispanic Journalists  
National Press Photographers Association  
National Writers Union  
Oakland Privacy  
Online News Association Local Los Angeles  
Orange County Press Club  
Pacific Media Workers Guild (the Newsguild-communications Workers of America Local 39521)  
Radio Television Digital News Association  
Society of Professional Journalists, Greater Los Angeles Chapter  
Society of Professional Journalists, Northern California Chapter  
We Make Kcrw  
Writers Guild of America West  
Writers Guild of America, East

**Oppose**

California Association of Highway Patrolmen  
California Civil Liberties Advocacy  
California Narcotic Officers' Association  
California Police Chiefs Association  
California State Sheriffs' Association  
California Statewide Law Enforcement Association  
Los Angeles County Sheriff's Department  
Los Angeles County Sheriff's Dept.  
Peace Officers Research Association of California (PORAC)  
Riverside Sheriffs' Association  
California Peace Officers Association

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