



COVID CHAOS: GOVERNOR'S EXECUTIVE ORDER ALTERING STATUTES RULED UNCONSTITUTIONAL

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In March 2020, Governor Newsom declared a state of emergency to deal with the COVID-19 pandemic. In the months that followed, Newsom invoked his emergency powers under the California Emergency Services Act (CESA) to issue more than 50 Executive Orders modifying state agency deadlines and procedures, and in some cases, altering existing state laws.

On March 30, 2020, Newsom issued Executive Order N-40-20, *extending the one-year statute of limitations under the Public Safety Officers Procedural Bill of Rights Act (POBRA) by 60-days*. Under *Government Code* §3304(d) (1), a public agency may not take punitive action against a peace officer if it fails to complete an investigation and serve a notice of discipline within one year of discovering the alleged misconduct.

Additionally, on June 3, 2020, Newsom issued Executive Order N-67-20, which in part, amended the Elections Code to mandate all registered voters receive a vote-by-mail ballot. Two Assembly members, James Gallagher and Kevin Riley sued, arguing the Governor exceeded his authority by altering state law, which is the Legislature's responsibility.

On November 2, 2020, a Sutter County Superior Court Judge *voided* Executive Order N-67-20 as "an unconstitutional exercise of legislative power." It permanently enjoined Newsom from using CESA to amend, alter, or change existing state laws. Although this lawsuit was aimed at the executive orders relating to the election, the ruling also *prohibits the Governor from ordering any state law amendments under CESA*.

While the Governor can appeal the ruling, it is unlikely an appeals court would reverse the injunction because to do so would involve granting the Governor authority reserved solely for the Legislature. This ruling preserves the Constitutional checks and balances between the Governor's Office and the Legislature.

As a result of the Sutter County Court ruling, it is likely **the 60-day extension to the POBRA statute of limitations is invalid**. Therefore, if you are facing discipline, and your public safety employer relied on the Governor's order and failed to serve a notice of intent before the 1-year deadline, it is likely any imposed discipline would be in violation of POBRA. However, unless it is raised at the appropriate time, a violation of POBRA may be waived. Now, more than ever, it is important for a peace officer subject to an adverse action to be represented by an attorney with experience in this area of law.

Stay Safe and Healthy!

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