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PRACTICE BRIEF · CIVIL RIGHTS

Recent Developments in California Civil Rights Law: 2023-2024

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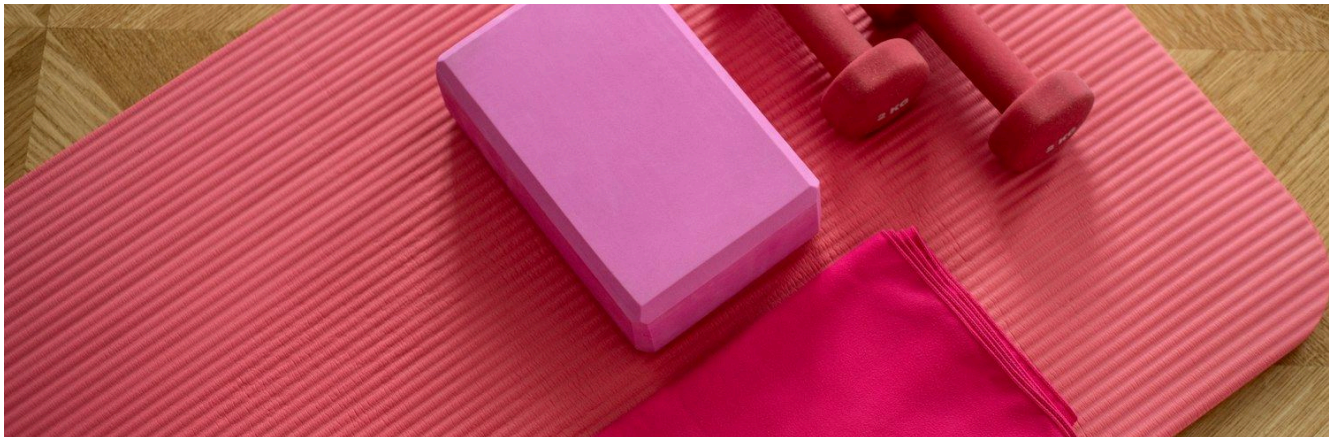

The 2023-2024 period produced a wave of significant civil rights developments in California and the Ninth Circuit, reshaping police accountability standards, municipal liability doctrine, and the constitutional boundaries of government conduct. While the federal **George Floyd Justice in Policing Act** remained stalled in Congress, California continued to lead with state-level reforms. The Supreme Court's grant of certiorari in *Johnson v. City of Grants Pass* signaled a potential sea change in Eighth Amendment protections for unhoused individuals, and the Ninth Circuit continued to develop its Monell liability jurisprudence. This article surveys five developments that practitioners, municipal attorneys, and public agencies should understand heading into the next legislative cycle.

I. State-Level Police Reform and the George Floyd Act's California Parallels

The federal George Floyd Justice in Policing Act, which passed the House in March 2021, never secured the 60 votes needed in the Senate. The bill would have banned federal no-knock warrants, ended qualified immunity in Section 1983 actions, established a national police misconduct registry, and restricted military-equipment transfers to local agencies. By mid-2023, bipartisan negotiations had collapsed. California did not wait. Between 2019 and 2024, the Legislature enacted reforms that addressed many of the same objectives at the state level, often going further:

- **AB 392 (2019)** — Rewrote Penal Code section 835a to replace the "objectively reasonable" force standard with a "necessary" force standard, discussed in detail in Section II below.

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- **AB 1196 (2020)** — Banned the use of carotid restraints and chokeholds by law enforcement officers statewide, adding Penal Code section 7286.5. Unlike the federal bill's proposed restrictions, California's ban is categorical — no exceptions for exigent circumstances.
- **SB 2 (2021, effective January 1, 2023)** — Created the nation's most expansive peace officer decertification framework. SB 2 established the Peace Officer Standards Accountability Advisory Board within the Commission on Peace Officer Standards and Training (POST), with authority to revoke the certification of officers who engage in serious misconduct, including excessive force, sexual assault, dishonesty in reporting, or bias-based policing.
- **SB 16 (2021)** — Made police personnel records related to sustained findings of dishonesty, sexual assault, excessive force, and racial bias subject to public disclosure under the California Public Records Act, expanding the categories of disclosable records beyond those established by SB 1421 (2018).

SB 2's decertification process became operational in January 2023 and has already generated significant litigation. Several police unions challenged the framework on due process grounds, arguing that the Advisory Board's composition — which includes non-law-enforcement members — and the evidentiary standards used in decertification proceedings violate officers' property interests in their certifications. As of late 2024, no California appellate court had ruled on these challenges, but trial courts in Sacramento and Los Angeles Counties denied preliminary injunctions, finding that the statutory hearing procedures satisfied due process.

> *"California's police reform legislation collectively represents the most significant state-level restructuring of law enforcement accountability since the Rampart scandal reforms — and the decertification framework under SB 2 may prove to be the most consequential of all."*

II. AB 392 and the "Necessary" Force Standard

Assembly Bill 392, which took effect on January 1, 2020, amended Penal Code section 835a to require that officers use deadly force only when it is **"necessary in defense of human life."** This replaced the "objectively reasonable" standard — the federal constitutional floor established in *Graham v. Connor*, 490 U.S. 386 (1989). The distinction is substantive. Under the amended section 835a, the statute imposes two requirements beyond what the Fourth Amendment demands:

1. The officer must reasonably believe, based on the totality of the circumstances, that deadly force is **necessary** to defend against an imminent threat of death or serious bodily injury to the officer or another person.
2. The officer must, where feasible, use **de-escalation techniques, time, distance, and other alternatives** to deadly force before resorting to it.

Early Case Law Under the "Necessary" Standard

By 2024, California courts had begun interpreting the "necessary" standard in ways that diverge meaningfully from federal Fourth Amendment analysis. Courts held that the necessity inquiry requires evaluating not merely whether force was reasonable at the moment deployed, but whether the officer's **pre-force conduct** — tactical positioning, failure to de-escalate, creation of circum-

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stances making force more likely — bears on whether force was truly "necessary." This approach has particular significance in mental health crisis cases: plaintiffs have argued — and courts accepted — that an officer who fails to request a crisis intervention team, eliminates retreat options, or escalates verbal commands may bear responsibility for creating the threat that made force appear necessary.

TRAINING AND COMPLIANCE IMPLICATIONS

- POST issued revised use-of-force training guidelines in 2023 requiring all California law enforcement agencies to integrate de-escalation into basic academy and continuing education curricula
- Agencies must document de-escalation efforts in use-of-force reports — the absence of such documentation is itself evidence under the necessity standard
- The "totality of the officer's conduct" approach has expanded the scope of discovery in civil rights cases, with plaintiffs now routinely seeking pre-incident communications, training records, and crisis intervention certifications
- Municipal liability carriers have responded by requiring departments to certify AB 392 compliance as a condition of coverage renewal

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III. Homeless Encampment Removal Litigation

The legal framework governing municipal responses to homeless encampments was fundamentally reshaped during this period, driven by the tension between the Ninth Circuit's holding in *Martin v. City of Boise*, 920 F.3d 584 (9th Cir. 2019), and the Supreme Court's decision to review *Johnson v. City of Grants Pass*, 72 F.4th 868 (9th Cir. 2023), cert. granted, 144 S. Ct. 2216 (2024).

In *Martin*, the Ninth Circuit held that the Eighth Amendment bars a municipality from criminally prosecuting individuals for sleeping outdoors on public property when no adequate shelter is available — punishing involuntary conduct constitutes cruel and unusual punishment under *Robinson v. California*, 370 U.S. 660 (1962). The practical consequences for California cities were significant: municipalities that could not demonstrate sufficient shelter capacity were effectively barred from enforcing anti-camping ordinances, producing a patchwork of responses — emergency shelter investments, managed encampment models, and enforcement paralysis.

In *Johnson*, the Ninth Circuit extended *Martin* to civil penalties and held that ordinances targeting survival items in public spaces constituted punishment of status rather than conduct. The Supreme Court granted certiorari in January 2024 and heard argument in April 2024. The question presented — whether the Eighth Amendment prohibits enforcement of generally applicable camping laws against homeless persons — had the potential to overturn *Martin* entirely. For California municipalities from Sacramento to San Diego, the stakes were enormous: cities had structured homelessness policies around *Martin*'s shelter-capacity framework, and a reversal would reopen enforcement options foreclosed for five years.

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> *"The uncertainty surrounding Grants Pass created a planning paralysis for California cities — agencies could not commit to long-term homelessness strategies without knowing whether Martin's shelter-capacity requirement would survive Supreme Court review."*

IV. First Amendment Retaliation in Public Employment

First Amendment retaliation claims by public employees continued to generate significant Ninth Circuit case law during 2023-2024, with courts refining the framework established in *Pickering v. Board of Education*, 391 U.S. 563 (1968), *Connick v. Myers*, 461 U.S. 138 (1983), and *Garcetti v. Ceballos*, 547 U.S. 410 (2006).

Under *Garcetti*, a public employee's speech is protected only if: (1) the employee spoke as a **citizen**, not pursuant to official duties; (2) the speech addressed a **matter of public concern**; and (3) the employee's interest outweighs the employer's interest in efficient operations (the *Pickering* balancing test). If the speech was made pursuant to official duties, no protection attaches regardless of its content.

The "Practical Inquiry" and Social Media Developments

The Ninth Circuit refined the *Garcetti* threshold during this period, emphasizing that the "pursuant to official duties" inquiry is a **practical one** that examines the nature, purpose, and context of the speech rather than relying on formal job descriptions. Panels held that speech is not made "pursuant to official duties" merely because it concerns the employee's workplace or uses information obtained at work. When an employee reports wrongdoing through channels **outside the chain of command** — to a newspaper, a legislative body, or a community organization — the speech is more likely characterized as citizen speech entitled to protection. This has particular relevance for officers reporting misconduct, public health officials raising safety concerns, and teachers challenging district policies.

The expansion of public employee speech to social media platforms generated a new category of retaliation claims. Courts applied a contextual analysis, distinguishing posts that contribute to public discourse on matters of community interest from those addressing personal grievances or internal office disputes. Panels consistently held that posts addressing **systemic institutional problems** — racial discrimination in hiring, safety protocol violations, or misuse of public funds — satisfy the public concern requirement even when they also express personal frustration.

V. Monell Liability Developments in the Ninth Circuit

Municipal liability under **42 U.S.C. section 1983** — governed by *Monell v. Department of Social Services*, 436 U.S. 658 (1978) — continued to evolve in the Ninth Circuit during 2023-2024, particularly with respect to the "policy or custom" requirement and the "failure to train" theory of liability.

Under *Monell*, a municipality is liable under Section 1983 only when the violation was caused by a government **"policy or custom"** — through an officially adopted policy, a longstanding practice so persistent as to constitute de facto policy, a decision by a final policymaker, or a failure to train

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amounting to deliberate indifference.

The Ninth Circuit addressed the "custom or practice" prong in several significant 2023-2024 panels, clarifying that plaintiffs must demonstrate more than isolated incidents — the pattern must be **sufficiently similar in nature, frequency, and context** to put the municipality on notice. However, panels also clarified that the pattern need not involve the same type of constitutional violation; a pattern of excessive force incidents may support a custom-based claim for a retaliatory arrest if both arise from the same underlying culture of impunity.

Failure to Train and Deliberate Indifference

The "failure to train" theory, recognized in *City of Canton v. Harris*, 489 U.S. 378 (1989), requires showing that (1) the training program was inadequate in a specific respect; (2) the inadequacy was closely related to the constitutional injury; and (3) the municipality was **deliberately indifferent** to the risk. During 2023-2024, Ninth Circuit panels expanded the evidentiary basis in two respects. First, panels held that sustained *and unsustained* internal affairs complaints — not merely prior lawsuits or judgments — can establish constructive notice of a training deficiency. Second, courts accepted POST training standards, IACP guidelines, and consent decree requirements from comparable jurisdictions as benchmarks — a municipality's failure to meet widely accepted industry standards was treated as circumstantial evidence of deliberate indifference.

PRACTICAL IMPLICATIONS FOR MUNICIPALITIES

- Internal affairs records — including complaints that were not sustained — are now discoverable and potentially relevant to Monell liability in the Ninth Circuit
- Municipalities should benchmark their training programs against POST standards and national best practices, and document the analysis that informed their training decisions
- The expansion of the "custom or practice" theory to cross-violation-type patterns requires municipalities to examine whether systemic institutional culture issues — not merely individual officer conduct — create constitutional risk
- Early adoption of AB 392 de-escalation training requirements may serve as evidence of non-deliberate-indifference in failure-to-train claims, while delayed implementation may support the opposite inference

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The legal landscape described reflects developments through the 2023-2024 period and may not account for subsequent legislative amendments, appellate decisions, or regulatory changes. Consult qualified counsel for advice specific to your situation.

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