We chose to begin this week’s Capitol Update with the below historical recap before we dive into recently introduced legislation, not to bore, but to remind ourselves of an inherent right: due process.

The concept of due process dates back to the 1200s, it origins commonly associated with the Magna Carta. While the term was never officially documented until the mid-1300s, the concept is well documented in the 1215 version of the document. Over the course of more than 900 years, due process has woven its way through the Western judicial system, finding itself in both the fifth and fourteenth Amendments of the United States Constitution. Given the longevity of the concept, any legislation that seems to weaken this right for peace officers is of great concern.

AB 1286, the Increasing Law Enforcement Transparency Act (Leno) went into print last week following a San Francisco press conference. This bill significantly undermines current privacy protections available to law enforcement officers by:

- Allowing for general access to records related to sustained charges against an officer;
- Allowing access to records relating to any use of force deemed likely to cause death or bodily injury;
- Permitting local governments to hold public hearings and administrative appeals based on allegations of misconduct and;
- Allowing persons who file complaints to access information relating to the complaints.

The only way in which an officer’s privacy can be protected under AB 1286 is if a court determines that a privacy interest outweighs the interest of disclosure or if the officer is able to demonstrate a significant danger to themselves or to another person.

One of the most alarming provisions of the bill is that concerning records relating to use of force. AB 1286 requires “A record related to the investigation or assessment of any use of force by a peace officer that is likely to or does cause death or serious bodily injury, including but not limited to, the discharge of a firearm, use of an electronic control weapon or conducted energy device, and any strike with an impact weapon to a person’s head,” to be open to public “inspection.” Even more problematic is the fact that AB 1286 is devoid of any language clarifying that such documentation will only be open to public “inspection” upon the conclusion of the investigation. Thus, these documents would be publically accessible during the course of investigation, allowing the public to become an unofficial jury.

The above causes us to ponder how open investigations, in an era of fast thoughts and even faster tweets, preserves due process for the officer under investigation. Is it possible for a neutral and impartial decision, as provided for under the 14th Amendment, to be made concurrently with commentary by the media, organizations, and individual citizens concerning details of the investigation? Under current law, our Pitchess statutes and related case law protect the confidentiality of records pertaining to alleged peace officer misconduct. These important protections serve to make these records confidential and exempt from disclosure under the Public Records Act.
Cal Chiefs will be working with the entire law enforcement community on this legislation. As always, please do not hesitate to contact us if you have any questions.