

Public Safety Officers Procedural Bill of Rights Act





Government Code § 3300, et seq.

This chapter shall be known, and may be cited, as the Public Safety Officers Procedural Bill of Rights Act (POBR)



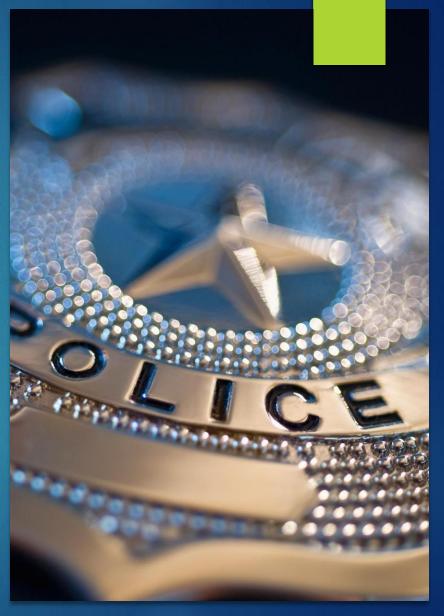


"Public Safety Officer" means any public safety officer under the following California Penal Code ("PC") sections:



PC 830.1(a)

- Sheriffs, Undersheriffs and Deputy Sheriffs employed by a County;
- Police Chiefs or Chief/Directors, or Chief Executive Officers of a Consolidated Municipal Public Safety Agency;
- Any Police Officer employed by a City or other Municipal Safety Agency;
- Any Police Officer of a District, including the San Diego Unified Port District Harbor Police;
- Marshals or Deputy Marshals of a Superior Court or County;
- Port Wardens or Port Police Officer of the Harbor Department of the City of Los Angeles;
- Any Inspector or Investigator employed in that capacity in the Office of a District Attorney.

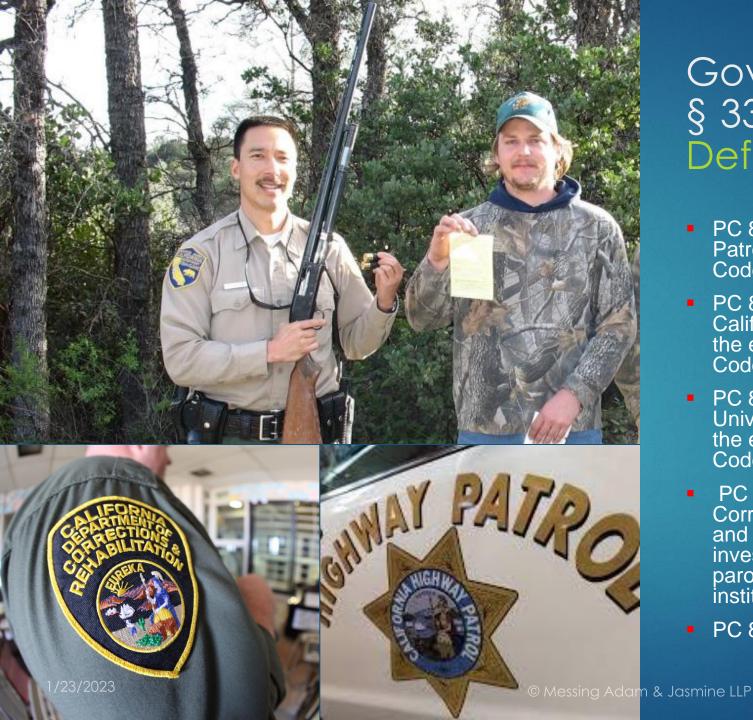




- PC 830.1(b) The Attorney General and Special Agents of the CA Department of Justice;
- PC 830.1(c) Any Deputy Sheriff of the Counties of: Butte, Calaveras, Colusa, Glenn, Humboldt, Imperial, Inyo, Kern, Kings, Lake, Lassen, Mariposa, Mendocino, Plumas, Riverside, San Benito, San Diego, San Luis Obispo, Santa Barbara, Santa Clara, Shasta, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, and Yuba who performs custodial assignments which are responsible for maintaining the operations of county custodial facilities... only while engaged in the performance of the duties of the officer's respective employment... or when performing other law enforcement duties directed by the officer's employing agency during a local state of emergency.







- PC 830.2 (a) Any member of the California Highway Patrol who primary job is to enforce California Vehicle Code or provide other police services;
- PC 830.2(b) Any member of the University of California Police Department, whose primary duty is the enforcement of Section 92600 of the Education Code;
- PC 830.2(c) Any member or the California State University Police Department, whose primary duty is the enforcement of Section 92600 of the Education Code;
- PC 830.2(d)(1) Any member of the Office of Correctional Safety of the Department of Corrections and Rehabilitation (DCR), whose primary duties are investigation and apprehension of inmates, wards, parolees, parole violators, or escapees from state institutions.
- PC 830.2(e) Department of Fish and Game Wardens

Government Code § 3302 Political Activity

Unless a Public Safety Officer is on duty and in uniform, he or she may not be prohibited from engaging in or coerced/required to engage in political activity nor shall a public safety officer be prohibited from seeking election to the governing board of a school district.

Government Code § 3303 Interrogation



When any public safety officer is under investigation and subjected to interrogation by his or her commanding officer, or any other member of the employing public safety department that could lead to punitive action, the interrogation shall be conducted under the following conditions:

- CCPOA v. State of California (2000) 82 Cal.App.4th 294 Questions by an outside agency can trigger the protections listed below. In this case, witnesses were told by a commanding officer that they must answer questions being asked by the Attorney General's Office or be suspended. The targets of the investigation were told they must answer the Attorney General's questions or be immediately arrested.
- City of Los Angeles v. Superior Court (Labio) (1997) 57 Cal.App.4th 1506 Any inquiry into sanctionable conduct triggers the protections listed below. The inquiry need not be a formal investigation or performed by IA.
- Paterson v. City of Los Angeles (2009) 95 Cal.Rptr.3d 333 Even if an officer is exonerated, POBR rights apply to the underlying investigation as the investigation was one which while it was being conducted "could lead to punitive action."
- Allen v. City of Burbank, No. B278024, 2018 WL 4275453, at *7 (Cal. Ct. App. Sept. 7, 2018)
 POBRA rights are triggered by the questions the investigator will ask not on the responses the interviewee is expected to make.
- Note that punitive action *may* be taken against public employees for misconduct committed while on unpaid leave (*Negron v. Los Angeles County Civil Service Commission* (2015) 240 Cal.App.4th 874) (since the deputy's conduct reflected adversely upon and was a discredit to the department, and his conduct came squarely within the prohibitions imposed by the department's manual of policies and procedures).



Government Code § 3303 Interrogation – Punitive action

"Punitive action" means any action that may lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for the purposes of punishment.

- White v. County of Sacramento (1982) 31 Cal.3d 676 – "For purposes of punishment" only modifies the word "transfer." (A transfer is disciplinary in nature only if imposed for purposes of punishment).
- But, transfers that do not result in loss of pay and are not for purposes of punishment do not trigger right to appeal. (Los Angeles Police Protective League v. City of Los Angeles (2014) 232 Cal.App.4th 136.)
- Manavian v. DOJ (2018) 28 Cal.App.5th 1127 Termination from a Career Executive Assignment is not a punitive action and does not trigger POBR protections.

- Henneberque v. City of Culver City (1983) 147 Cal.App.3d 250 – Permanent employee on probation in new position is entitled to administrative appeal from demotion (and corresponding salary decrease).
- Otto v. Los Angeles Unified School District (2001) 89
 Cal.App.4th 985 "May lead to ..." (Includes a "summary of conference" memo which warned and set up a basis for possible future disciplinary action).
- Turturici v. City of Redwood City (1987) 190 Cal.App.3d 1447
 Routine negative evaluations are not punitive action.
- Leonard v. City of Los Angeles (9th Cir. 2016) 2016 WL 6212008, 669 Fed.Appx. 912 (citable but not designated for publication) Reassignment and non-promotion is not punitive action when passing a psychological exam is a requirement for appointment under POBR and FFBOR.
- Perez v. Westminster (2016) 5 Cal.App.5th 358 Removal from SWAT, honor guard and failure to assign trainees as FTO was not punitive action under POBR (§ 3303) (loss of prestige and overtime was not punishment).





Government Code § 3303(a) Interrogation

Conducted at a reasonable hour

Conducted on-duty, unless the seriousness of the investigation requires otherwise

If conducted off-duty, Public Safety Officer must be compensated

Public Safety Officer can't be released from employment for any missing work while being interrogated



Government Code § 3303(b)-(e) Interrogation

- A Public Safety Officer under investigation shall be informed, of the name, rank and command of the officer in charge of the interrogation, the interrogating officers, and all other persons present. There shall be no more than two interrogating officers at one time, and the Public Safety Officer shall be informed of the nature of the investigation, prior to any interrogation.
- The interrogation shall be for a reasonable period of time, and the Public Safety Officer must be allowed reasonable breaks.
- City of Los Angeles v. Superior Court (Labio) (1997) 57 Cal.App.4th 1506 Statements obtained in violation of these rules, even in an informal investigation, can be suppressed. (Labio drove by fatal accident in a marked patrol vehicle to a doughnut shop. He was questioned without being advised that he was under investigation, without being advised of his Miranda rights. If he were informed he might have taped the discussion and requested a representative).
- Ellins v. City of Sierra Madre (2016) 244 Cal.App.4th 445. Requirement that police officers be notified of the nature of the investigation prior to any interrogation must allow time to meaningfully consult with a representative of his/her choosing. The Court suggests meaningful consultation includes the need for enough specificity in the allegations to adequately prepare. And see Contra Costa County College District (2019) PERB Dec. No. 2652 under the Educational Employment Relations Act.
- Perez v. Los Angeles Community College District (2014) PERB Decision No. 2404 Burden is on the employer to justify a blanket admonition not to discuss investigation with other employees as interference with the right to represent oneself under applicable bargaining laws.





Government Code § 3303(e) Interrogation (Lybarger Immunity)

A Public Safety Officer, under interrogation, shall not be subjected to offensive language or threatened with punitive action, except that an Officer refusing to respond to questions or submit to interrogations shall be informed that failure to answer questions directly related to the investigation or interrogation may result in punitive action.

- See Lybarger v. City of Los Angeles (1985) 40 Cal.3d 822.
- Garrity v. New Jersey (1967) 385 U.S. 493 The seminal case overturning peace officer convictions that had been based in part on the officers' own statements given after being told that if they refused to answer questions they would be terminated. The U.S. Supreme Court held that the threat of removal from public office rendered the resulting statements involuntary and therefore inadmissible in the state criminal proceedings.
- Spielbauer v. County of Santa Clara (2007) 53 Cal.Rptr.3d 357 The Court of Appeal decision had threatened to turn a long line of cases on its head by holding that an employee has a constitutional right to remain silent unless given an express grant of immunity. The California Supreme Court subsequently granted review and agreed with our position, expressed in our amicus curiae brief filed with the California Supreme Court, that while employees can be ordered to respond to questions during an administrative investigation (and can be punished for refusal to answer those questions), the use of those statements in any criminal proceeding is forbidden, without any need to obtain a formal grant of immunity.
- United States v. Smith (11th Cir. 2016) 821 F.3d 1293 A required written report of a critical incident is protected if clearly ordered.





Government Code § 3303(e) Media

A Public Safety Officer's photograph and contact information shall not be given to the media, nor shall a Public Safety Officer be subjected to visits by the media without the express consent of the Public Safety Officer.



Government Code § 3303(f)(1) & (2) Coerced Statements (Lybarger Immunity)

A statement made during interrogation by a Public Safety Officer under threat of punitive action shall not be admissible in any subsequent civil proceeding, except when:

- the Department is seeking civil sanctions against any Public Safety Officer, including disciplinary action brought under Section 19572.
- the Public Safety Officer or his or her association has brought a civil or administrative action arising out of the disciplinary action.
- an *in camera* review has determined that the statements can serve to impeach the Officer's testimony, and the statements are in fact used to impeach the Officer's testimony.
- the Officer being interrogated is subsequently deceased, his or her statements shall be admissible.



Government Code § 3303(g) Further Interrogation - Recorded Statements



The interrogation of a Public Safety Officer may be recorded, and the Public Safety Officer may bring his or her own recording device. The Public Safety Officer shall have access to any recordings prior to any further interrogation.

- Pasadena POA v. City of Pasadena (1990) 51 Cal.3d 564 No preinterrogation discovery. However, a transcript or tape of the employee's own prior interrogation is available at any follow-up interrogation. No right to complaints and reports until receipt of Skelly package.
- McMahon v. City of Los Angeles (2009) 172 Cal.App.4th 1324 Department did not have to provide officer with materials used in investigation if he was cleared of all charges, and such materials could not be used for personnel purposes. In such circumstances all that must be provided is a summary of complaints and the identity of the complainants. This is so due to the fact that the officer was exonerated, and the Department's regulations prohibited the use of such materials in making personnel decisions.



Government Code § 3303(g) Further Interrogation – Notes, Reports, Complaints

The Public Safety Officer is entitled to a transcribed copy of any notes made by a stenographer, or any reports or complaints made by investigators or other persons, except those portions that are required by law to be kept confidential. Confidential reports shall not be entered into a Public Safety Officer's personnel file.

California is split:

- Court of Appeal for the Fourth Appellate District
 - Santa Ana Police Officers Association v. City of Santa Ana (2017) 13 Cal.App.5th 317 Because discovery rights to reports and complaints are coextensive with discovery rights to tape recordings of interrogations, and tapes recordings must be produced 'prior to any further interrogation,' then it follows that reports and complaints also must be produced 'prior to any further interrogation.
- Court of Appeal for the First Appellate District
 - Oakland Police Officers' Assn. v. City of Oakland (2021), 63 Cal. App. 5th 503 The omission of the phrase "prior to" in the sentence mandating disclosure of reports and complaints indicated that the Legislature intended for such disclosures to occur after an interrogation.



Appellate Court Conflicts

When there are conflicting court of appeal decisions on point, the trial court can choose to follow either of them; it can even adopt the position taken by another district, notwithstanding a conflicting decision emanating from the trial court's own district. Auto Equity Sales, Inc. v. Sup.Ct. (Hesenflow) (1962) 57 C2d 450, 456, 20 CR 321, 324; McCallum v. McCallum (1987) 190 CA3d 308, 315, 235 CR 396, 400, fn. 4



If trial courts adhere to the decisions from their own districts:

Counties of the Fourth District: Inyo, San Bernardino, Riverside, Orange, San Diego, and Imperial, may follow *Santa Ana Police Officers Assn. v. City of Santa Ana* and, absent a claim of confidentiality, reports and complaints also <u>must</u> be produced prior to any further interrogation.

Counties of the First Appellate District: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Napa, San Francisco, San Mateo, Solano, and Sonoma, post-interrogation disclosure of notes, complaints, and reports against a peace officer is guided by an investigating agency's exercise of its discretion to designate certain materials as confidential in furtherance of its investigative objectives.



Government Code § 3303(h) Miranda Rights

If, prior to or during the interrogation of a Public Safety Officer, it is contemplated that he or she may be charged with a criminal offense, he or she shall be immediately informed of his or her constitutional rights.

- See Criminal Immunity § 3303
- See Lybarger Immunity § 3303(f)(1)-(4)





Government Code § 3303(i) Right to Representation

Whenever an interrogation may result in punitive action against a Public Safety Officer, that Public Safety Officer shall have the right to a representative of his or her choice present at all times during the interrogation.

The representative shall not be a person subject to the same investigation The representative shall not be required to disclose or be subject to any punitive action for refusing to disclose any information received from the Public Safety Officer under investigation for non-criminal matters.

This does not apply to counseling, instruction, or informal verbal admonishments by, or other routine or unplanned contact with, a supervisor or any other Public Safety Officer.

- Titus v. Civil Service Commission (1982) 130 Cal.App.3d 357 Attorney-client privilege vs. Police Officer's law enforcement duties. (Discharge of Lieutenant, who was also an attorney, upheld where he refused, due to attorney-client privilege, to disclose name and identity of individual possessing dynamite).
- Redwoods Community College District v. Public Employment Relations Board (1984) 159 Cal.App.3d 617 Although this section purports to exclude representation for "counseling" this case held that in some (unusual) circumstances, right to representation exists for counseling under bargaining laws when (for example) the issue is highly emotional and contentious.
- Upland POA v. City of Upland (2003) 111 Cal.App.4th 1294 Employee entitled to a "reasonably available representative of his or her choice." Court also implied a "mutually agreeable time." In this case, it was held that the representative (who was a lawyer) was only entitled to reschedule the interrogation once.
- Quezada v. City of Los Angeles (2014) 222 Cal.App.4th 993. Officers had no right to postpone interrogation due to the seriousness of the charge (firing weapon while off-duty and drunk) even though officers were awake for 24 hours, intoxicated, hung over, and chosen representative unavailable.





Government Code § 3303(j) Assignments

A Public Safety Officer shall not be loaned or temporarily reassigned to a location or duty assignment if a sworn Public Safety Officer of his or her department would not normally be sent to that location or would not normally be given that duty assignment under similar circumstances.

- Crupi v. City of Los Angeles (1990) 219 Cal.App.3d 1111.
 (Being assigned to a desk job was normal for officers involved in shootings, until the officers are cleared by a psychiatrist).
- McManigal v. City of Seal Beach (1985) 166 Cal.App.3d 975
 Transfer resulting in loss of pay is per se punitive.



Government Code § 3304(a) Punitive Action

A Public Safety Officer shall not be subjected to or threatened with punitive action, or denied promotion, because of the lawful exercise of rights granted under this Act, or under any administrative grievance procedure. However, if a Public Safety Officer fails to comply with an order to cooperate with other agencies involved in criminal investigations, the Agency may officially charge him or her with insubordination.

• [Court v. PERB/Arbitration, See § 3260.]



Government Code § 3304(b) Punitive Action (Administrative Appeal)

Punitive action or denial of promotion on grounds other than merit shall not be undertaken against any non-probationary Public Safety Officer without providing the Public Safety Officer with an opportunity for administrative appeal.

Butler v. County of Los Angeles (1981) 116 Cal.App.3d 633 – Opportunity for appeal comes after action is taken James v. City of Coronado (2003) 106 Cal.App.4th 905 – For some discipline, hearing need not be a 'due process hearing," unless there is a loss of pay. Giuffre v. Sparks (1999) 76
Cal.App.4th 1322 – Due Process
(property interest).
(Removal from SWAT, with a pay reduction, entitled officer to full evidentiary appeal).

Orange County Employees Association v. County of Orange (1988) 205 Cal.App.3d 1289 – No appeal from transfer for "deficiency in performance." But, transfers that do not result in loss of pay and are not for purposes of punishment do not trigger right to appeal. (Los Angeles Police Protective League v. City of Los Angeles (2014) 232 Cal.App.4th 136.)

Demotion with corresponding salary decrease is punitive.
(Henneberque v. City of Culver City (1983) 147 Cal.App.3d 250 – Permanent employee on probation in new position is entitled to administrative appeal from demotion and corresponding salary decrease.)



Government Code § 3304(c) Punitive Action (Police Chief)

A Police Chief shall not be removed without written notice and an opportunity for administrative appeal. Nothing in this subdivision shall be construed to create a property interest, if one does not otherwise exist by rule of law, in the job of Police Chief.

- Establish record name clearing hearing.
 Binkley v. City of Long Beach (1993) 16 Cal.App.4th 1795
- Impartial hearing officer required Gray v. City of Gustine (1990)
 224 Cal.App.3d 621



Government Code § 3304(d)(1) Punitive Action (Limitations Period)

Investigation must be completed and subject notified of proposed disciplinary action within one year of discovery of the act, omission, or other misconduct.

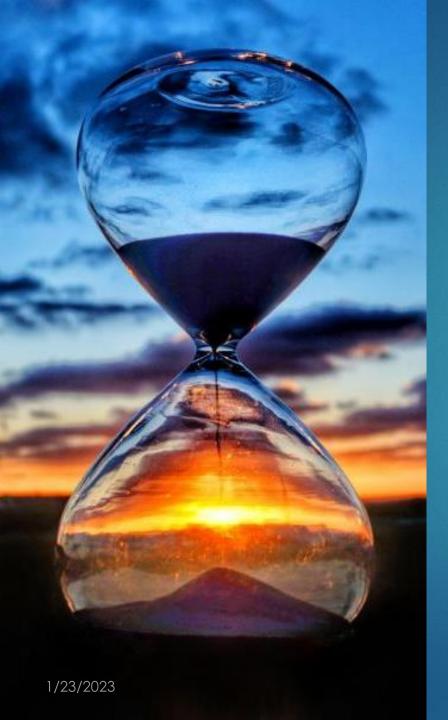
Sanchez v. City of Los Angeles (2006) 140 Cal.App.4th 1069 – Upholds one-year statute of limitations. While the one-year statute of limitations is still applicable, The California Supreme Court, in Mays v. City of Los Angeles (2008) 43 Cal.4th 313, held that the relevant section of the POBR merely requires that the public agency must notify the employee that it has decided that it might take some type of disciplinary action against the officer for certain, specified misconduct. Notice of the specific level of discipline to be imposed is no longer required.

NOTE: The Agency shall not be required to impose the discipline within that one-year period.

- Alameida v. State Personnel Board (2004) 120 Cal.App.4th 46 Officer's allegedly false denial of charges during administrative interview did not constitute a separate offense of untruthfulness for the purposes of extending the statute of limitations.
- CCPOA v. SPB (2007) 147 Cal.App.4th 797 Extensive lying during administrative interview can constitute a separate offense triggering a new one year statute of limitations period. (Unlike Alameida, the charges were only a few months past the statute of limitations period, so memories were still fresh. Additionally, the dishonesty was not simply a denial of charges, but concerned a variety of issues regarding the investigation).
- Melkonians v. Los Angeles County Civil Service Commission (2009) 174 Cal.App.4th 1159 SOL to bring a punitive action against an employee for one set of allegations was tolled during the period of time the officer had been terminated (and was appealing) his termination for other alleged misconduct.
- Ochoa v. County of Kern (2018) 22 Cal.App.5th 235 Limitations period begins when any officer who has authority to investigate the facts of the allegation discovers potential misconduct. The officer does not need authority to initiate IA or impose serious discipline. But see Daugherty v. City and County of SF (2018) 24 Cal.App.5th 928 Courts should generally apply agency's designation of who is a "person authorized to initiate an investigation."







Government Code §§ 3304(d)(1) and (d)(2) Punitive Action (Limitation Period Exceptions)

- A) If the act, omission, or other allegation of misconduct is also the subject of a criminal investigation or criminal prosecution, the time during which the criminal investigation or criminal prosecution is pending, shall toll the one-year period.
- B) If the Public Safety Officer waives the one-year time period, the period shall be tolled for the time specified in the written waiver.
- C) If the investigation is multijurisdictional and requires a reasonable extension for coordination of the involved agencies.
- Huelsse v. County of Santa Clara (May 7, 2010) WL 1828616 (unpublished opinion) The SOL for punitive action against an officer is tolled during a pending criminal investigation of another officer for conduct related to the conduct that is the subject of the punitive action.
- Department of Corrections and Rehabilitation v. SPB (2016) 247 Cal.App.4th 700 (Iqbal) Statute of limitations is tolled even when criminal investigation is conducted internally.
- Daugherty v. City and County of SF (2018) 24 Cal.App.5th 928 SOL does not start if conduct is subject to confidentiality restrictions by another investigating agency.



Government Code § 3304(d)(1) and (2) Punitive Action (Limitations Period Exceptions) continued

- D) If the investigation involves more than one employee and requires a reasonable extension.
- E) If the investigation involves an employee who is incapacitated or unavailable.
- F) If the investigation involves a matter in civil litigation where the Public Safety Officer is named as a defendant, the one-year time period is tolled while that civil action is pending.
- G) If the investigation involves a matter in criminal litigation in which the complainant is a criminal defendant, the one-year time period shall be tolled during the period of that defendant's criminal investigation and prosecution.
- H) If the investigation involves an allegation of workers' compensation fraud by the Public Safety Officer.
 - CDCR v. SPB (Moya) (2013) 215 Cal.App.4th 1101 SOL does not apply if the investigation involves an allegation of workers' compensation fraud.



Government Code §§ 3304(d)(1) and (2) Punitive Action (Limitations Period Exceptions) continued

- Investigation should only be initiated when an officer authorized to initiate it knows or should know that there is actionable misconduct. An officer authorized to initiate an investigation should not be required to on the basis of unsubstantiated rumors. . Shouse v. Cnty. of Riverside (2002) 84 Cal.App.5th 1080, reh'g denied (Nov. 23, 2022), review filed (Dec. 13, 2022)
- ▶ Gavin Newsom's Executive Order N-40-20 continues to extend by 60-day statute of limitations of Government Code section 3304(d) and will continue to do so until the Order is withdrawn or the State of Emergency ends.



Government Code § 3304(e) Pre-Disciplinary Responses

Where a pre-disciplinary response or grievance procedure is required or utilized, the time for this response or procedure shall not be governed or limited by this chapter.





Government Code § 3304(f) Punitive Action (Notification Period)

If the Public Agency decides to impose discipline, that Agency shall notify the Public Safety Officer, in writing, of its decision to impose discipline, including the date that the discipline will be imposed, within 30 days of the decision, except where the Public Safety Officer is unavailable for discipline.

Neves v. California Department of Corrections and Rehabilitation (2012) 203 Cal.App.4th 61 – Public safety officer was properly notified of intent to impose disciplinary action where he received notice of adverse action within 30 days of the decision to impose the action. This leads to situations where as long as the employee is notified that some discipline will be imposed within the 1-year period of limitations, the Department has an additional 30-days to notify the employee of what that discipline might be.



Government Code § 3304(g) Punitive Action (Reopening of Investigation)

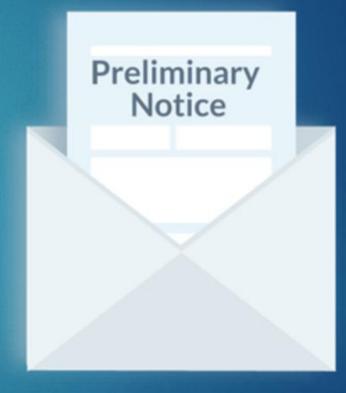
An investigation may be reopened after the one-year limitations period if both the following circumstances exist:

- Significant new evidence has been discovered that is likely to affect the outcome of the investigation; AND
- 2. Either, the evidence could not reasonably have been discovered in the normal course of investigation without resorting to extraordinary measures by the agency, OR the evidence resulted from the Public Safety Officer's pre-disciplinary response or procedure.



Government Code § 3304(h) 30-Day Notice

For those members listed in subdivision (a) of Section 830.2 of the Penal Code, the 30-day time period provided for in subdivision (f) shall not commence with the service of a preliminary notice of adverse action, should the public agency elect to provide the public safety officer with such a notice.







Government Code § 3304.5 Administrative Appeals

Administrative appeals instituted by a Public Safety Officer under this chapter shall be conducted in conformance with rules and procedures adopted by the local public agency.

- Due process requires a pre-disciplinary hearing, and an evidentiary appeal after imposition of the discipline. *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194. However, in the case of short term suspensions (generally 5 days or less), no pre-disciplinary hearing is required rather the hearing may occur shortly after the imposition of the penalty. *Ng v. State Personnel Board* (1977) 68 Cal.App.3d 600; *Civil Service Association, Local 400 v. City and County of San Francisco* (1978) 79 Cal.3d 540).
- An Amendment to the FFBOR provides that if an MOU provides for binding arbitration of administrative appeals, the arbitrator shall serve as the "hearing officer" in accordance with the APA. However, an MOU with binding arbitration does not control the process for administrative appeals with licensing or certifying agencies. Such appeals must adhere to the requirements of the APA.
- Siebert v. City of San Jose (2016) 247 Cal.App.4th 1027 Under FFBOR the APA requires hearing by an ALJ.



Government Code § 3305 Personnel Files (Adverse Comments)

A Public Safety Officer shall not have any adverse comments entered in a personnel file (or any other file used for personnel purposes), without the Public Safety Officer having first read and signed the instrument containing the adverse comment indicating he or she is aware of the comment. If the Public Safety Officer has read the instrument and refuses to sign it, that fact shall be noted on the document, signed or initiated by the Public Safety Officer, and then the entry may be made.

- Miller v. Chico Unified School District (1979) 24 Cal.3d 703 Under the Education Code, any file used for personnel purposes is a personnel file.
- Sacramento POA v. Venegas (2002) 101 Cal.App.4th 916 An index card regarding an allegation of neglect of duty is an adverse comment.
- Brutsch v. City of Los Angeles (1992) Cal.App.4th 354 Employer is not required to disclose negative comments made in connection with a civil service promotional exam.
- Poole v. Orange County Fire Authority (2015) 61 Cal.4th 1378 The first California Supreme Court decision interpreting the FFBOR, this case held that daily logs kept by a Fire Captain were NOT subject to the FFBOR requirement allowing a firefighters the opportunity to review and comment because (according to the Court) they were not used for personnel purposes but to refresh the memory of the Fire Captain.
- White v. County of Los Angeles (2016) 2016 WL 2910095 Adverse comments in confidential memoranda leading to a fitness for duty exam are subject to POBR right to review and respond.



Government Code § 3305.5(a) and (b) Personnel Files (Brady List)

No punitive action, or denial of promotion on grounds other than merit, shall be undertaken by any public safety agency against a Public Safety Officer solely because that officer's name has been placed on a Brady list, or that the officer's name may otherwise be subject to disclosure pursuant to Brady v. Maryland (1963) 373 U.S. 83.

However, a public safety agency is not prohibited from taking punitive action, denying promotions on grounds other than merit, or taking other personnel actions against a Public Safety Officer based on the underlying acts or omissions for which that Officer's name was placed on the Brady List, or is otherwise subject to disclosure pursuant to Brady v. Maryland.



Government Code § 3305.5(c)-(e) Brady Lists - Administrative Appeals or Punitive Action

No evidence that a Public Safety Officer's name has been placed on a Brady list, or is otherwise subject to disclosure under Brady v. Maryland (1963) 373 U.S. 83, shall be introduced in any administrative appeal or punitive action unless the act or omission giving rise to the Officer's name being placed on the Brady List is found to be subject to some form of punitive action.

If a hearing officer or other administrative tribunal finds that the Officer has committed the underlying acts or omissions that will result in punitive action, denial of a promotion on grounds other than on merit, or other adverse personnel action, and evidence exists that the Public Safety Officer's name has been placed on a Brady List, then that evidence shall be introduced for the sole purpose of determining the type or level of punitive action to be imposed.

This provision was added effective January 1, 2014.

Nazir v. County of Los Angeles (2013) 2013 WL 1303327 (California Court of Appeal, citable but not designated for publication) – District Attorney's action in placing peace officer on Brady List does not trigger POBR protections.

"Penal Code section 832.7(a) does not authorize a DA to directly review Peace Officer personnel files of officers expected to be prosecution witnesses to comply with *Brady*." [AG Opinion Kamala Harris 12-401 (2015).]



Government Code § 3306 Personnel Files (Response to Adverse Comments)

- A Public Safety Officer shall have 30 days within which to file a written response to any adverse comment entered in his or her personnel file. The written response shall be attached to, and shall accompany, the adverse comment.
- While routine negative evaluations are not punitive action (*Turturici v. City of Redwood City* (1987) 190 Cal.App.3d 1447), there is still a right to respond – but not to appeal.





Government Code § 3306.5 Personnel Files (Inspection)



Employers must keep Public Safety Officers' personnel files. Officers have the right to inspect their personnel files within a reasonable period of time after making a request, during normal business hours, with no loss of compensation.



Government Code § 3306.5 Personnel Files (Inspection) - continued

If a Public Safety Officer believes that any material is mistakenly or unlawfully placed in their personnel file, the Public Safety Officer may request, in writing, that the mistaken or unlawful portion be corrected or deleted. Within 30 calendar days of the request, the employer shall either grant the request or notify the Public Safety Officer of the refusal to grant the request. If the employer refuses to grant the request, the employer shall state, in writing, the reasons for refusing the request, and that statement shall become part of the personnel file.

- Rosales v. City of Los Angeles (2000) 82 Cal.App.4th 419 Despite the confidentiality of peace officer personnel records under Penal Code sections 832.5 and 832.7, no remedy is set forth in the statutes, so there is no right to bring a private lawsuit for disclosure of confidential personnel records. [See also, Fagan v. Superior Court (2003) 111 Cal.App.4th 607
- Barber v. California Dept. of Corrections and Rehabilitation (2012) 203 Cal.App.4th 638 Because POBR rights were only intended to apply during employment, after termination the right to inspect a personnel file ends.



Government Code § 3307 Lie Detector



A Public Safety Officer cannot be compelled to submit to a lie detector test, and refusal to submit cannot be noted or used against the Public Safety Officer.

- Estes v. City of Grover City (1978) 82 Cal.App.3d 509 –
 Establishes an exclusionary rule.
- Aengst v. Board of Medical Quality Assurance (1980) 110
 Cal.App.3d 275 Even voluntary exams are not admissible.
- Los Angeles Police Protective League v. City of Los Angeles (1995) 35 Cal.App.4th 1535 – No prohibition on use of lie detector for screening for voluntary transfer to sensitive assignments





Government Code § 3307.5 Privacy Rights of Public Safety Officers

- (a) No public safety officer shall be required as a condition of employment by his or her employing public safety department or other public agency to consent to the use of his or her photograph or identity as a public safety officer on the Internet for any purpose if that officer reasonably believes that the disclosure may result in a threat, harassment, intimidation, or harm to that officer or his or her family.
- (b) Based upon his or her reasonable belief that the disclosure of his or her photograph or identity as a public safety officer on the Internet as described in subdivision (a) may result in a threat, harassment, intimidation, or harm, the officer may notify the department or other public agency to cease and desist from that disclosure. After the notification to cease and desist, the officer, a district attorney, or a United States Attorney may seek an injunction prohibiting any official or unofficial use by the department or other public agency on the Internet of his or her photograph or identity as a public safety officer. The court may impose a civil penalty in an amount not to exceed five hundred dollars (\$500) per day commencing two working days after the date of receipt of the notification to cease and desist.



Government Code § 3308 Disclosure of Assets

A Public Safety Officer cannot be required or requested to disclose his or her assets, income, or debts, unless such information is obtained or required under state law or proper legal procedure, AND EITHER tends to indicate a conflict of interest with respect to the performance of his official duties, OR is necessary for the employing agency to determine the desirability of assigning the Public Safety Officer to a specialized unit where there is a strong possibility that bribes or other improper inducements may be offered.



Government Code § 3309 Locker Search

A Public Agency employer cannot search a Public Safety Officer's locker or other space for storage unless he or she is present, or consents, or has been notified that a search will be conducted, or a valid search warrant has been obtained.

- O'Connor v. Ortega (1987) 480 U.S. 709. Establishes standards for "reasonable expectations of privacy" under the 4th Amendment to the U.S. Constitution.
- Delia v. City of Rialto (9th Cir. 2010) 621 F.3d 1069 Compelled search of firefighter's home during internal affairs investigation violates 4th Amendment. Thus, an employee has a constitutional right, in the course of an internal affairs investigation, not to be ordered (under the threat of discipline) to consent to a warrantless search of the employee's home. (Note that this case arose pre-FFBOR).
- Is a telephone or computer "other space for storage"?
 - See Quon v. City of Ontario (2010) 560 U.S. 746 U.S. Supreme Court held City Police Officer had a reasonable expectation of privacy in his text messages. However, Court held that searches conducted for non-investigatory, work-related purposes or for the investigation of work-related misconduct, a government employer's warrantless search is reasonable if 1) it's justified at its inception; and 2) the measures adopted are reasonably related to the objective of the search and not excessively intrusive.
 - See also Larios v. Lunardi (2016) 2016 WL 6679874 Court held that CHP officer had a reasonable expectation of privacy in his personal cellphone, despite having used it at times for work with the permission of his government employer, AND even in the face of notice that any work product would have to be turned over to the state
 - See also Penal Code 1546 et. seq. –California Electronic Communications Privacy Act (2015)
 - But see *City of San Jose v. Superior Court of Santa Clara County (*2017) 2 Cal.5th 608 CA Supreme Court held that communication about public business or on a personal account may be subject to disclosure requirements under the California Public Records Act (CPRA)



Government Code § 3309.5 Enforcement of this Act

- It is unlawful for any public safety department to deny or refuse any Public Safety Officer the rights and protections of this Act, and a Public Safety Officer or association may file a lawsuit in superior court alleging violations of this Act.
- The superior court can render injunctive or other extraordinary relief to remedy the violation(s) and to prevent future violations of a like and similar nature. This can include an injunction prohibiting the department from taking any punitive action against the Public Safety Officer.
- Mounger v. Gates (1987) 193 Cal.App.3d 1248 No exhaustion of administrative remedies is required.
- Lanigan v. City of Los Angeles (2011) 199 Cal.App.4th 1020 Rights may be waived by individual employees during employment as part of a disciplinary settlement agreement.
- Mitchel v. City of Santa Rosa (2011) 2011 WL 6807553, 476 Fed.Appx. 661 (citable but not designated for publication) Although POBR (and, by extension the FFBOR) grants initial jurisdiction to State courts, this does not vest exclusive jurisdiction over such claims in the courts.
- Hanna v. City of Los Angeles (1989) 212 Cal.App.3d 363 Exclusion of statements that could impact the outcome of a disciplinary case.
- Allen v. City of Burbank, No. B278024, 2018 WL 4275453, at *11 (Cal. Ct. App. Sept. 7, 2018) Knowingly offer inaccurate, false, or improper information may exceed POBRA protection.







Government Code § 3309.5 Enforcement of this Act - continued

- If the court finds that a public safety department maliciously violated any provision of the Act with the intent to injure the Public Safety Officer, the department shall be liable for a civil penalty of up to \$25,000, for each violation, in addition to actual damages established, to be awarded to the Public Safety Officer whose right or protection was denied and for reasonable attorney's fees as may be determined by the court.
- A court can also issue sanctions and award attorney's fees and expenses against a party filing an action under these sanctions, if it finds that the action was frivolous or brought in bad faith.



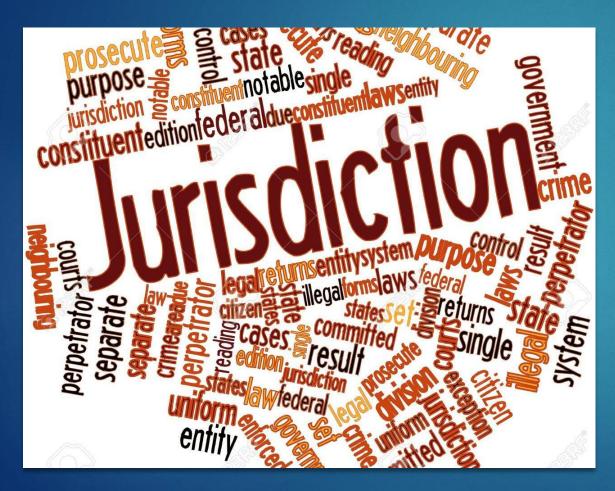
Government Code § 3310 Equivalent Procedures



Any Public Agency which has adopted, through action of its governing body or its official designee, any procedure which at a minimum provides to Peace Officers the same rights or protections as provided pursuant to this chapter shall not be subject to this chapter with regard to such a procedure.



Government Code § 3311 Mutual Aid Agreements/Jurisdiction



Nothing in this chapter shall in any way be construed to limit the use of any public safety agency or any public safety officer in the fulfilling of mutual aid agreements with other jurisdictions or agencies, nor shall this chapter be construed in any way to limit any jurisdictional or interagency cooperation under any circumstances where such activity is deemed necessary or desirable by the jurisdictions or the agencies involved.



Government Code § 3312 Display of American Flag on Uniform



Notwithstanding any other provision of law, the employer of a public safety officer may not take any punitive action against an officer for wearing a pin or displaying any other item containing the American flag, unless the employer gives the officer written notice that includes all of the following:

- (a) A statement that the officer's pin or other item violates an existing rule, regulation, policy, or local agency agreement or contract regarding the wearing of a pin, or the displaying of any other item, containing the American flag.
- (b) A citation to the specific rule, regulation, policy, or local agency agreement or contract that the pin or other item violates.
- c) A statement that the officer may file an appeal against the employer challenging the alleged violation pursuant to applicable grievance or appeal procedures adopted by the department or public agency that otherwise comply with existing law.



Government Code § 3313 Modification/ Amendments

In the 2005-06 fiscal year, the Commission on State Mandates shall review its statement of decision regarding the Peace Officer Procedural Bill of Rights test claim and make any modifications necessary to this decision to clarify whether the subject legislation imposed a mandate consistent with the California Supreme Court Decision in San Diego Unified School Dist. v. Commission on State Mandates (2004) 33 Cal.4th 859 and other applicable court decisions.

If the Commission on State Mandates revises its statement of decision regarding the Peace Officer Procedural Bill of Rights test claim, the revised decision shall apply to local government Peace Officer Procedural Bill of Rights activities occurring after the date the revised decision is adopted.



The Role of Representatives During Internal Affairs Investigations



Guide Officers through the process:

- Procedural Rights Only: Educate officers on POBR's procedural rights. It does not protect against imposition of discipline. If you screw up, then you screwed up.
- You lie, you die: Officers have to assume the Investigators know everything or will find out. Worst case scenario – officer charged with lying during IA interview.
- Obey and Grieve: Do not attempt to discontinue interview unless clear POBR violation – generally, even then, you should object, have the Officer continue to answer questions, and grieve the violation later. Only under the rarest of situations should you instruct the Officer to leave the interview, and only after consulting with an attorney.
- Record: If possible, record statement to memorialize denial of <u>any rights</u>.
 If recorder not available or not permitted – get a witness.



Role of Public Safety During Critical Incidents (OIS/In-Custody Deaths)

Employees involved in critical incidents should be mindful of the following:

- 1. To the extent possible, refrain from "venting" to other employees the details of the incident;
- 2. Police Chaplin communication is <u>not</u> privileged clergy-penitent communication.
- 3. Any statements given outside the presence of an association attorney should be limited to basic facts and the employee should avoid representations regarding state of mind; and
- 4. Prior to being questioned regarding the details of the incident outside the presence of an attorney, the employee should ask the investigator whether they are entitled to a representative. Regardless of the whether the investigator agrees that the employee is entitled to representation, the employee should assert his/her right to a representative if the employee believes that his/her responses might subject the employee to administrative discipline or criminal charges.



Role of Representative in OIS/In-Custody Deaths

- Notify the POA/DSA
- Safety Statements: Department has a right to question officer involved re # and direction of shots fired, witnesses, suspect description, direction of flight, identification of crime scene, or any other information related to public safety.
- Do NOT ask about incident: There is no privilege in criminal matters. You could be called to testify. Ensure that officer only speaks to an attorney about the how/what/when, etc. of incident.
- Ensure Officer's Mental Well-Being: Call significant other, instruct them to sleep, eat or whatever else is necessary.





AB 1506 – OIS of Unarmed Civilians

Requires the Attorney General to investigate incidents of an officer-involved shooting resulting in the death of an "unarmed civilian."

Unarmed civilian includes anyone who is <u>not</u> in possession of a "Deadly weapon," which includes, but it not limited to:

Gov. Code § 12525.3





Public Records Requests re Officer Data – SB 1421

Allows for Public Records Requests for:

- Records relating to an officer shooting at a person
- Records relating to use of force resulting in death or great bodily injury
- Records relating to a sustained finding an officer engaged in sexual assault
- Records relating to a sustained finding an officer was dishonest in the reporting, investigation, or prosecution of a crime

Penal Code § 832.7

Open Questions:

- Is this law retroactive?
- Can IA statements be made public?



Peace Officer Personnel Records Requests - SB 16

Expansion of SB 1421. The following peace officer or custodial officer personnel records and records maintained by a state or local agency shall not be confidential and shall be made available for public inspection pursuant to the California Public Records Act a record relating to the report, investigation, or findings of any of the following:

- A sustained finding involving a complaint that alleges unreasonable or excessive force.
- A sustained finding that an officer failed to intervene against another officer using force that is clearly unreasonable or excessive.
- Any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency that a
 peace officer or custodial officer engaged in conduct including, but not limited to, verbal statements, writings, online posts, recordings,
 and gestures, involving prejudice or discrimination against a person on the basis of race, religious creed, color, national origin,
 ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity,
 gender expression, age, sexual orientation, or military and veteran status.
- Any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency that
 the peace officer made an unlawful arrest or conducted an unlawful search.
- The circumstances surrounding the separation of employment (e.g., resignation while under investigation, opportunity to appeal, etc.) may be determinative whether such records are disclosable pursuant to CPRA, SB 1421 and SB 16. Wyatt v. Kern High Sch. Dist. (2022) 296 Cal.Rptr.3d 476 (vacated Oct. 28, 2022, WL 15208309) (factual record regarding the separation was insufficient)

Penal Code § 832.7

Peace Officer Personnel Record Retention – SB 16



- Complaints and any reports or findings relating to these complaints, including all complaints and any reports currently in the possession of the department or agency, shall be retained for a period of no less than 5 years for records where there was not a sustained finding of misconduct and for not less than 15 years where there was a sustained finding of misconduct.
- A record shall not be destroyed while a request related to that record is being processed or any process or litigation to determine whether the record is subject to release is ongoing. All complaints retained pursuant to this subdivision may be maintained either in the peace or custodial officer's general personnel file or in a separate file designated by the department or agency as provided by department or agency policy, in accordance with all applicable requirements of law.

Penal Code § 832.5(b)



Mandatory Reporting of Use of Force – SB 16

Every person employed as a peace officer shall immediately report all uses of force by the officer to the officer's department or agency.

Penal Code § 832.13



Peace Officer Background Check Requirement – SB 16



- Each department or agency in this state that employs peace
 officers shall make a record of any investigations of misconduct
 involving a peace officer in the officer's general personnel file or a
 separate file designated by the department or agency. A peace
 officer seeking employment with a department or agency in this
 state that employs peace officers shall give written permission for
 the hiring department or agency to view the officer's general
 personnel file and any separate file designated by a department or
 agency.
- Prior to employing any peace officer, each department or agency in this state that employs peace officers shall request, and the hiring department or agency shall review, any records made available pursuant to subdivision (a).

Penal Code § 832.12



Peace Officer Decertification - Senate Bill No. 2 (SB 2)

POST has the authority to suspend, revoke, or cancel any POST certification. Penal Code § 13510.1

Revocation of a POST certificate, for reasons of peace officer employment, will have the same effect as a felony conviction, having been found not guilty by reason of insanity, addicted to narcotics, etc. See Gov. Code § 1029

SB-2 requires law enforcement agencies to report specified criteria to POST. Penal Code § 13510.1

Beginning no later than January 1, 2023, each law enforcement agency shall be responsible for the completion of investigations of allegations of serious misconduct by a peace officer, regardless of their employment status. Penal Code § 13510.8

POST will review, investigate, and make a final determination to suspend or revoke. Penal Code § 13510.9



SB 2 Reporting - Law enforcement agencies are required to report to POST any complaint or allegation of "serious misconduct"

Serious misconduct includes:

- Dishonesty relating to the reporting, investigation, or prosecution of a crime, or relating to the reporting of, or investigation of misconduct by, a peace officer or custodial officer, including, but not limited to:
 - false statements,
 - intentionally filing false reports,
 - tampering with, falsifying, destroying, or concealing evidence,
 - perjury, and
 - tampering with data recorded by a body-worn camera or other recording device for purposes of
 - concealing misconduct.



SB 2 requires that law enforcement agencies report to POST any complaint or allegation of "serious misconduct" (continued)



- Abuse of power, including, but not limited to, intimidating witnesses, knowingly obtaining a false confession, and knowingly making a false arrest.
- Physical abuse, including, but not limited to, the excessive or unreasonable use of force.
- Sexual assault, as described in subdivision (b) of Section 832.7.
- Demonstrating bias on the basis of race, national origin, religion, gender identity or expression, housing status, sexual orientation, mental or physical disability, or other protected status in violation of law or department policy or inconsistent with a peace officer's obligation to carry out their duties in a fair and unbiased manner.



SB 2 requires that law enforcement agencies report to POST any complaint or allegation of "serious misconduct" (continued)

- Acts that violate the law and are sufficiently egregious or repeated as to be inconsistent with a peace officer's obligation to uphold the law or respect the rights of members of the public, as determined by the commission.
- Participation in a law enforcement gang, which means a group of peace officers within a law enforcement agency who may identify themselves by a name and may be associated with an identifying symbol, including, but not limited to, matching tattoos, and who engage in a pattern of on-duty behavior that intentionally violates the law or fundamental principles of professional policing.
- Failure to cooperate with an investigation into potential police misconduct.
- Failure to intercede when present and observing another officer
 using force that is clearly beyond that which is necessary, as
 determined by an objectively reasonable officer under the
 circumstances, taking into account the possibility that other officers
 may have additional information regarding the threat posed by a
 subject.





SB-2 also requires law enforcement agencies to report to POST:



- Any complaint, charge, or allegation of conduct against a peace officer that could render a peace officer subject to suspension or revocation.
- Any finding or recommendation by a civilian oversight entity, including a civilian review board, civilian police commission, police chief, or civilian inspector general that could render a peace officer subject to suspension or revocation of certification.
- The final disposition of any investigation that determines a peace officer engaged in conduct that could render a peace officer subject to suspension or revocation of certification.
- Any civil judgment or court finding against a peace officer based on conduct, or settlement of a civil claim against a peace officer or an agency based on allegations of officer conduct that could render a peace officer subject to suspension or revocation.





SB 2 Misconduct Review and Decertification Process

- All misconduct reported to POST will be processed through two newly created entities:
 - The Peace Officer StandardsAccountability Division ("division")
 - The Peace Officer StandardsAccountability Advisory Board ("board")



SB 2: Peace Officer Standards Accountability Division ("division")

- "The division shall be staffed with a sufficient number of experienced and able employees that are capable of handling the most complex and varied types of decertification investigations, prosecutions, and administrative proceedings against peace officers." Penal Code § 13509.5
- The division will review investigations conducted by law enforcement agencies or any other investigative authority and conduct additional investigations as necessary.
- They have to the authority to investigate with or without the request of POST or the board any potential grounds for revocation of certification of a peace officer.
- They also have the authority to review any agency or other investigative authority file. Penal Code § 832.7(a); Penal Code § 13510.8 (c)(2)-(3).



SB 2: Peace Officer Standards Accountability Division ("division") Initial Stage of Decertification Process

 Upon the completion of the division's investigation and the division finds reasonable grounds for revocation or suspension of a peace officer's certification, it will notify the peace officer involved of its determination and reasons therefore.

 The peace officer will be provided with a detailed explanation of the decertification procedure and the peace officer's rights to contest and appeal.

• The peace officer will have 30 days to request the board and commission to review of the division's determination.

 If the peace officer does not request a timely review, the peace officer's certification will be suspended or revoked.

 If the request is timely, the board will schedule a hearing.







SB 2: The Peace Officer Standards Accountability Advisory Board ("board") - The board shall consist of 9 members

- 2 current or former peace officers
 - 1 with substantial experience at a command rank, appointed by the Governor.
 - 1 with substantial experience at a management rank in internal investigations or disciplinary proceedings of peace officers, appointed by the Governor.
- 2 shall be members of the public, not former peace officers, who have substantial experience working at nonprofit or academic institutions on issues related to police accountability.
 - 1 appointed by the Governor
 - 1 appointed by the Speaker of the Assembly.

- 2 shall be members of the public, not former peace officers, who
 have substantial experience working at community-based
 organizations on issues related to police accountability.
 - 1 appointed by the Governor
 - 1 appointed by the Senate Rules Committee.
- 2 shall be members of the public, not be former peace officers, with strong consideration given to individuals who have been subject to wrongful use of force likely to cause death or serious bodily injury by a peace officer, or who are surviving family members of a person killed by the wrongful use of deadly force by a peace officer, appointed by the Governor.
- 1 shall be an attorney, not a former peace officer, with substantial professional experience involving oversight of peace officers, appointed by the Governor.



SB 2: The Peace Officer Standards Accountability Advisory Board ("board") Review of Division's Findings

- The board will review the findings of investigations presented by the division and make a recommendation on what action should be taken on the certification of the peace officer involved.
- The board can only recommend revocation if the factual basis for revocation is established by clear and convincing evidence.
- If the board determines that the facts and circumstances revealed by the investigation warrant
 a sanction other than revocation, it may recommend that a peace officer's certification be
 suspended for a period of time.
- The board shall issue a written decision explaining its reasons for decertification or suspension.
- The POST commission shall review all recommendations made by the board



SB 2: The POST Commission Review



- POST's decision to adopt a recommendation by the board to seek revocation requires a twothirds vote of the POST commissioners present and shall be based on whether the record, in its entirety, supports the board's conclusion that serious misconduct has been established by clear and convincing evidence.
- In any case in which the commission reaches a different determination than the board's recommendation, it shall set forth its analysis and reasons for reaching a different determination in writing.



SB 2: The POST Commission Determination

POST will return any determination requiring action to be taken against an peace officer's certification back to the division, which will then initiate proceedings for a formal hearing before an administrative law judge in accordance with the Administrative Procedure Act, which shall be subject to judicial review as set forth in that Act.

If after administrative adjudication the division's findings are upheld, POST will publish the names of any peace officer whose certification is suspended or revoked and the basis for the suspension or revocation and shall notify the National Decertification Index of the International Association of Directors of Law Enforcement Standards and Training (NDI) of the suspension or revocation.

The NDI is a nation wide web-based database that contains records of government regulatory actions taken against peace officers found guilty of misconduct. POST agencies in any state can access the NDI free of charge. The NDI alerts hiring law enforcement agencies, who are conducting a background investigation, in cases where an individual who has been de-certified on one state seeks employment in another, anywhere in the country.



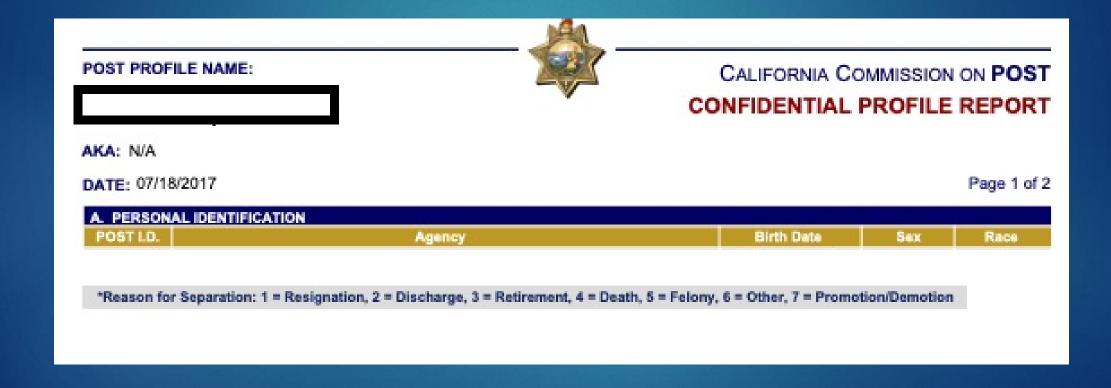
SB 2: State Civil Actions under the Bane Act

The state immunity provisions provided in Sections 821.6, 844.6, and 845.6 of the Government Code shall not apply to any cause of action brought against any peace officer or custodial officer, as those terms are defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, or directly against a public entity that employs a peace officer or custodial officer, under this section.

Civ. Code § 52.1(n)



SB-2 For Future Laterals: Your POST profile will likely contain more detail about the reason for separation. Currently, only Resignation, Discharge, Retirement, Death, Felony, Other and Promotion/Demotion are stated.



SB-2 Creates New Reasons for Termination/Separation to include:

"Involuntary Separation"

"Resigned/Retired Pending Complaint, Administrative Charge, or Investigation for misconduct."

As well as details regarding the discharge related to:

- Dishonesty
- Abuse of Power
- Physical Abuse
- Sexual Assault

 Demonstrating Bias
- Egregious Repeated Acts
- Law Enforcement Gang
- Failure to Cooperate with Investigation
- Other (allowing agencies to fill-in-the-blank)







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