
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
2019 - 2020 Regular

Bill No: AB 1299 **Hearing Date:** July 31, 2020
Author: Salas
Version: June 29, 2020
Urgency: No **Fiscal:** Yes
Consultant: GC

Subject: *Peace Officers: Employment*

HISTORY

Source: Author

Prior Legislation: SB 1421 (Skinner), Ch. 988, Stats. of 2018
AB 2327 (Quirk), Ch. 966, Stats. of 2018
AB 1428 (Low), 2017, held on Senate Appropriations Suspense
AB 953 (Weber), Ch.466, Stats. 2015
AB 619 (Weber), 2015 held on Assm. Appropriations Suspense
SB 1286 (Leno), 2016, held Sen. Appropriations Suspense
AB 71 (Rodriguez), Ch. 462, Stats. 2015
SB 1019 (Romero), 2008, failed passage in Assembly Pub. Safety
AB 1648 (Leno), 2007, failed passage in Assembly Pub. Safety

Support: Asian Americans Advancing Justice – California; AT&T; California State Sheriffs’ Association; Hanford Police Department; National Association of Social Workers – California; Peace Officers Research Association of California (PORAC);

Opposition: None known

Assembly Floor Vote: Not relevant

PURPOSE

The purpose of this legislation is to create a rubric at the Commission on Peace Officer Standards and Training (POST) for information on investigations and results of sustained findings of misconduct to be housed and accessed by law enforcement agencies conducting pre-employment background investigations on candidates for employment.

Existing law requires peace officers to meet all of the following minimum standards (Gov. Code, § 1031):

- Be a citizen of the United States or a permanent resident alien who is eligible for and has applied for citizenship, except as specified;
- Be at least 18 years of age;
- Be fingerprinted for purposes of search of local, state, and national fingerprint files to disclose a criminal record;

- Be of good moral character, as determined by a thorough background investigation;
- Be a high school graduate, pass the General Education Development Test or other high school equivalency test approved by the State Department of Education that indicates high school graduation level, pass the California High School Proficiency Examination, or have attained a two-year, four-year, or advanced degree from an accredited college or university; and
- Be found to be free from any physical, emotional, or mental condition that might adversely affect the exercise of the powers of a peace officer.
 - Physical condition shall be evaluated by a licensed physician and surgeon;
 - Emotional and mental condition shall be evaluated by either of the following:
 - A physician and surgeon who holds a valid California license to practice medicine, has successfully completed a postgraduate medical residency education program in psychiatry, and has a specified amount of experience; or
 - A psychologist licensed by the California Board of Psychology with a specified amount of experience.

States that the physician and surgeon or psychologist shall also have met any applicable education and training procedures set forth by the California Commission on Peace Officer Standards and Training designed for the conduct of pre-employment psychological screening of peace officers. (Gov. Code, § 1031)

Existing law specifies that the peace officer requirements do not preclude the adoption of additional or higher standards, including age. (Gov. Code, § 1031, subd. (g).)

Existing law states that for purposes of performing a thorough background investigation for applicants not currently employed as a peace officer, an employer shall disclose employment information relating to a current or former employee, upon request of a law enforcement agency, if all of the following conditions are met (Gov. Code, § 1031.1.):

- The request is made in writing;
- The request is accompanied by a notarized authorization by the applicant releasing the employer of liability; and
- The request and the authorization are presented to the employer by a sworn officer or other authorized representative of the employing law enforcement agency.

Existing law requires every peace officer candidate be the subject of employment history checks through contacts with all past and current employers over a period of at least ten years, as listed on the candidate's personal history statement. (Code of Regulations, Title 11, § 1953, subd. (e)(6).)

Existing law requires proof of the employment history check be documented by a written account of the information provided and source of that information for each place of employment contacted. All information requests shall be documented. (Code of Regulations, Title 11, § 1953, subd. (e)(6).)

Existing law states that if a peace officer candidate was initially investigated in accordance with all current requirements and the results are available for review, a background investigation update, as opposed to a complete new background investigation, may be conducted for either of the following circumstances: (Code of Regulations, Title 11, § 1953, subd. (f)(a).)

- The peace officer candidate is being reappointed to the same POST-participating department. Per regulations, a background investigation update on a peace officer who is reappointed within 180 days of voluntary separation is at the discretion of the hiring authority; or
- The peace officer candidate is transferring, without a separation, to a different department; however, the new department is within the same city, county, state, or district that maintains a centralized personnel and background investigation support division.

Existing law requires each department or agency in this state that employs peace officers to establish a procedure to investigate complaints by members of the public against the personnel of these departments or agencies, and shall make a written description of the procedure available to the public. (Pen. Code, § 832.5, subd. (a)(1).)

Existing law requires complaints and any reports or findings relating to these complaints be retained for a period of at least five years. (Pen. Code, § 832.5, subd. (b).)

Existing law specifies prior to any official determination regarding promotion, transfer, or disciplinary action by an officer's employing department or agency, the complaints, as specified, shall be removed from the officer's general personnel file and placed in separate file designated by the department or agency, in accordance with all applicable requirements of law. (Pen. Code, § 832.5, subd. (b).)

Existing law states that each law enforcement agency shall annually furnish to the Department of Justice, a report of all instances when a peace officer employed by that agency is involved in any of the following: (Government Code, § 12525.2, subd. (a).)

- An incident involving the shooting of a civilian by a peace officer;
- An incident involving the shooting of a peace officer by a civilian;
- An incident in which the use of force by a peace officer against a civilian results in serious bodily injury or death; and
- An incident in which use of force by a civilian against a peace officer results in serious bodily injury or death.

Existing law specifies that each year, the Department of Justice (DOJ) shall include a summary of information contained in the use of force reports received through the department's OpenJustice Web portal. (Government Code, § 12525.2, subd. (c).)

Existing law includes within Department of Justice's annual reporting requirements the number of citizens' complaints received by law enforcement agencies which shall indicate the total number of these complaints, the number alleging criminal conduct of either a felony or misdemeanor, and the number sustained in each category. (Pen. Code, § 13012, subd. (e).)

This bill requires that every law enforcement agency shall notify the Commission on Peace Officer Standards and Training (POST) within 10-days when a peace officer separates from employment.

This bill specifies that the notification to POST shall include a factual summary of the circumstances of any termination or any resignation in lieu of termination.

This bill requires that if a peace officer resigns or retires with a pending complaint, charge, or investigation of a serious nature, the employing agency shall do the following:

- Specify in the notification to the commission that the officer resigned or retired with a pending complaint, charge, or investigation.
- Specify in the notification the specific nature of the complaint, charge, or investigation, including a brief summary of the allegations.
- Complete the investigation in a thorough and unbiased manner.
- Upon completion of the investigation, report to the commission on whether the charges were sustained, not sustained, or unfounded.
- In the event of a sustained complaint, include a summary of facts.

This bill specifies that complaints of a “serious nature” means complaints that would likely result in termination, demotion, or suspension of the officer for 30-days or more if the charges were sustained and the officer had been employed by the agency.

This bill requires that POST shall include the information reported pursuant to this section in an officer’s profile, in a manner that may be accessed by the subject of the profile, by an employing agency of the subject of the profile, and by any law enforcement agency that is performing a pre-employment background investigation of the subject of the profile.

This bill provides that if an agency reports to POST that an investigation resulted in a finding that a charge is not sustained or unfounded, the commission shall remove any reference to the charge, complaint, or investigation from the person’s profile.

COMMENTS

1. Need for This Bill

According to the author:

This bill seeks to address the exploitation of “resigning in lieu of termination” that is common throughout law enforcement agencies. When an officer is being investigated for misconduct, they will sometimes resign before the investigation is complete or their employment is terminated. According to local police chiefs and law enforcement groups, when this happens an investigation is usually halted and the officer and department will go their separate ways.

This practice allows officers to make lateral moves to different departments. Throughout the hiring process, their superiors are often unaware of the prior investigations into the applicant’s behavior. This tactic is exploited by problematic officers in order to avoid termination and to continuously seek employment at different law enforcement agencies.

According to the Commission on Peace Officer Standards and Training (POST), there have been 10,368 resignations of full-time peace officers between 2015 and 2019.

2. Peace Officer Background Checks

Government Code § 1031 establishes the minimum standards needed to qualify as a peace officer. One of the requirements is that the individual be of good moral character, as determined by a thorough background investigation. (Gov. Code, § 1031, subd. (d).). That statute does not provide a further description of the requirements of that background check generally, nor does it specify what type of background check is required for an individual that is currently a peace officer and is applying for a job as a peace officer with a new law enforcement agency.

The California Code of Regulations, Title 11, § 1953 provides further specifications on the required background investigation for peace officers. Section 1953 mandates that every peace officer candidate shall be the subject of employment history checks through contacts with all past and current employers over a period of at least ten years, as listed on the candidate's personal history statement and requires that proof of the employment history check shall be documented by a written account of the information provided and source of that information for each place of employment contacted.

That section does allow for a background information update, as opposed to a complete new background investigation under limited circumstances for individuals that have already completed a peace officer background investigation. Section 1953 does not specify whether a current peace officer undergoing a new background check, or an updated background check must give the hiring agency access to personnel files for any law enforcement agency at which the officer has previously worked. Section 1953 does not specify whether an applicant must authorize the hiring agency access to personnel records that would otherwise be confidential under law.

AB 2327 (Quirk), 966, Stats. of 2018 codified that peace officers seeking employment with a law enforcement agency must give written permission for the hiring law enforcement agency to view his or her general personnel file and any separate disciplinary file. The new law also required that each law enforcement agency to make a record of any investigations of misconduct involving a peace officer in his or her general personnel file or a separate file designated by the department or agency. The bill did not, however, require law enforcement agencies to look at the prior personnel records of potential hires.

It has traditionally been common practice for hiring law enforcement agencies to require prospective applicants to sign authorizations for the hiring agency to access records from previous employers. It seems that the authorizations typically include permission to access an applicant's disciplinary records if that applicant had previously been employed as a peace officer with another agency.

Given the liability risk of hiring an officer with a disciplinary record as a peace officer, one would expect that hiring agencies would be vigilant in checking on an applicant's employment background, particularly if that employment was with another law enforcement agency. Hiring law enforcement agencies have a strong incentive to require peace officer applicants to sign authorizations giving the hiring agency access to law enforcement personnel records that would ordinarily be confidential. To the extent an applicant who was a peace officer at another agency does not give authorization for the hiring agency to check his or her disciplinary record at the

previous agency, such a refusal should set off alarm bells for the hiring agency. However, despite these incentives, agencies are not required under state law to conduct these pre-employment checks of prior personnel records.

This bill would create a rubric POST for information on investigations and results of sustained findings of misconduct to be housed and accessed by law enforcement agencies conducting pre-employment background investigations on candidates for employment. By centralizing the location and housing of the information and making the information available to law enforcement agencies seeking to conduct a pre-employment background check on potential hires this bill would incentivize a more thorough examination of an officer's employment history.

3. POST Guidelines on Peace Officer Background Investigations

The Commission on Peace Officer Standards and Training (POST) publishes a manual that contains guidelines for the investigator conducting the background check on peace officers. That publication is the POST Background Investigation Manual: Guidelines for the Investigator and can be found at <http://lib.post.ca.gov/Publications/bi.pdf>

The Background Investigation Manual identifies two goals of the pre-employment background investigation:

- Assuring compliance with all applicable minimum standards for appointment; and
- Screening out candidates who, based on their past history or other relevant information, are found unsuitable for the positions in question.

In its introductory material, the Background Investigation Manual emphasizes that the manner in which a background investigation is conducted can make the difference between hiring an individual who will truly protect and serve versus someone who may cause harm to oneself, the agency, and society. The Manual stresses that the peace officer background investigation must be comprehensive if it is to lead to informed hiring decisions. Past misconduct and other signs of unsuitability must be uncovered so that dangerous or otherwise unfit candidates are screened out. (<http://lib.post.ca.gov/Publications/bi.pdf>)

The Code of Regulations requires an investigation of a peace officer candidate's employment history for a minimum of the past 10 years (Code of Regulations, Title 11, § 1953, subd. (e)(6).); however, the peace officer Personal History Statement requires candidates to document their entire employment history.

The POST Background Guidelines suggest that employment information inquiries include the following:

- Disciplinary actions;
- Being fired, released from probation, or asked to resign;
- Workplace violence;
- Resignation in lieu of termination;
- Subject of written complaints or counseling for poor performance;
- Subject of discrimination accusations;
- Attendance problems;
- Unsatisfactory performance reviews;

- Misuse of confidential information;
- Misuse of sick leave;
- Poor performance as a result of drug/alcohol consumption; and
- History and status of applications to other law enforcement agencies

The POST Background Guidelines Manual includes a suggested authorization form for employment background investigations of Peace Officers. The suggested form includes authorization for the hiring agency to access information that would be part of an officer's confidential personnel file, if the officer had previously worked at another law enforcement agency. This bill would expand the role of POST to include housing officer profiles with sustained findings of misconduct that could be accessed by law enforcement agencies conducting pre-employment background checks.

4. Content of the Officer Profile

This bill requires that agencies provide POST with notification that an officer has separated from employment with the agency. The agency then keeps an "officer profile" that includes a factual summary of any sustained complaints of a serious nature. Any information that is provided to POST that was not sustained or unfounded must be removed from the profile.

However, even though the contents of the profile are limited to factual summaries of sustained misconduct agencies may still access an officer's full personnel record from a prior agency under the provisions of Penal Code, § 832.12 which states:

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 his or her 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 his or her general personnel file and any separate file designated by a department or agency.

Under this provision if a potential employing agency would like to see more than a factual summary they can request the contents of the personnel file from the officer's former employing agency.

5. Possible Amendment

Under California law, subject to very limited exceptions, police personnel records are confidential and not subject to disclosure. The provisions of this bill require that law enforcement agencies disclose otherwise confidential records to POST for housing and distribution to other agencies. Presumably, as the confidentiality provisions were enacted by Legislative action in the codification of Penal Code, § 832.7, the provisions of this bill would be exempted from the confidentiality provisions of that code. Nevertheless, an amendment that specified "Notwithstanding the provisions of Penal Code, § 832.7" would cut down on the possibility and likelihood of unnecessary litigation involving local law enforcement agencies seeking to comply with the provisions of this bill.

6. Argument in Support

According to Asian Americans Advancing Justice – California:

Advancing Justice - CA, a partnership of Advancing Justice - Asian Law Caucus and Advancing Justice - Los Angeles, advocates for the civil and human rights of Asian American, Native Hawaiian, and Pacific Islander and other underserved communities to promote a fair and equitable society for all. We advocate for transformation of the criminal justice system to reduce the overreliance on our inhumane and ineffective punitive carceral system, and to reinvest these resources in addressing the root causes of crime and criminalization.

Following the tragic death of George Floyd, it was revealed that the alleged perpetrator, an officer of the Minneapolis Police Department, had 18 prior complaints filed against him. In fact, another officer present on the scene that day had six complaints filed with internal affairs, one of which was still open. In California, a similar environment exists where law enforcement agencies sometimes hire officers with a history of misconduct. In many circumstances, departments may not be aware of an officer's past misconduct due to the tactic of resigning in lieu of termination. When an officer resigns in lieu of termination, the investigation into their misconduct is usually halted. This allows an officer to move to a different agency without their superiors knowing that they were under investigation at their previous job.

We strongly support AB 1299 because it will reform the way law enforcement agencies make hiring decisions. This bill will require agencies to complete misconduct investigations and inform the Commission on Peace Officer Training and Standards (POST) of their findings. Law enforcement agencies will be able to access this information during pre-employment background checks to ensure that they are hiring the best quality candidates to serve our community.

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