
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair
2021 - 2022 Regular

Bill No: AB 2547 **Hearing Date:** June 28, 2022
Author: Nazarian
Version: June 13, 2022
Urgency: No **Fiscal:** Yes
Consultant: AB

Subject: *Peace officers: determination of bias*

HISTORY

Source: Author

Prior Legislation: SB 2 (Bradford), Ch. 409, Stats. of 2021
AB 846 (Burke) Ch. 322, Stats. of 2020
AB 243 (Kamlager, 2019), held in Senate Appropriations

Support: California Disability Services Association

Opposition: None known

Assembly Floor Vote: Not Applicable

PURPOSE

The purpose of this bill is to require the Commission on Peace Officer Standards and Training (POST), to establish a definition of “biased conduct” and require law enforcement agencies to use that definition in any investigation into a bias-related complaint or incident involving possible officer bias.

Existing law establishes the Commission on Peace Officer Standards and Training (POST) to set minimum standards for the recruitment and training of peace officers, develop training courses and curriculum, and establish a professional certificate program that awards different levels of certification based on training, education, experience, and other relevant prerequisites and states the powers of POST, including among others, to develop and implement programs to increase the effectiveness of law enforcement, to secure the cooperation of state-level peace officers, agencies, and bodies having jurisdiction over systems of public higher education in continuing the development of college-level training and education programs. (Pen. Code, §§ 830-832.10; 13500 et. seq.)

Existing law authorizes POST, for the purpose of raising the level of competence of local law enforcement officers, to adopt rules establishing minimum standards related to physical, mental and moral fitness and training that shall govern the recruitment of any peace officers in California. (Pen. Code, § 13510, subd. (a).)

Existing law requires POST to develop and deliver training courses for peace officers on a wide array of topics, including, the use of tear gas, SWAT operations, elder abuse, persons with

disabilities, behavioral health, technology crimes, sexual assault, first aid, missing persons, gang and drug enforcement, use of force and human trafficking, among others. (Pen. Code §§13514 – 13519.15.)

Existing law requires POST to post on its internet website all current standards, policies, practices, operating procedures and education and training materials, as specified. (Pen. Code, § 13650.)

Existing law requires each class of public officers or employees declared by law to be peace officers shall meet minimum standards, including that they be free from any physical, emotional, or mental condition, including bias against race or ethnicity, gender, nationality, religion, disability, or sexual orientation, that might adversely affect the exercise of the powers of a peace officer. (Gov. Code, § 1031, subd. (f).)¹

Existing law requires POST, by January 1, 2022, to study, review and update their regulations and associated screening materials related to the evaluation of emotional and mental condition to include the identification of explicit and implicit bias toward race or ethnicity, gender, nationality, religion, disability, or sexual orientation. . (Gov. Code, § 1031.3.)

Existing law requires all peace officers to complete an introductory course of training prescribed by POST, demonstrated by passage of an appropriate examination developed by POST. (Pen. Code, § 832, subd. (a).)

Existing law provides that once the initial basic peace officer training is completed, specified peace officers who adhere to the standards approved by the Commission on Peace Officer Standards and Training (POST) shall be required to complete a refresher course on racial and identity profiling, including implicit bias, every five years thereafter, or on a more frequent basis if deemed necessary, in order to keep current with changing racial, identity, and cultural trends. (Pen. Code, § 13519.4, subd. (i).)

Existing law provides that a peace officer may have their certification suspended or revoked if the person has engaged in any serious misconduct while employed as a peace officer, where “serious misconduct” includes “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.” (Pen. Code, §13510.8, subd. (b).)

This bill requires POST to establish a definition of “biased conduct” that, at a minimum, includes all of the following:

- Biased conduct includes conduct resulting from implicit and explicit biases
- Conduct is biased if a reasonable person would conclude so using the facts at hand.

¹ This requirement was originally enacted by AB 846 (Burke), Ch. 322, Stats of 2020, but was inadvertently repealed by subsequent legislation. AB 2229 (Rivas), currently pending in the Senate, would reinstate the requirement related bias against race or ethnicity, gender, etc.

- An officer need not admit biased or prejudiced intent for conduct to reasonably appear biased.
- Biased conduct may occur in an encounter with the public, with other officers, or online, such as conduct on social media.

This bill requires law enforcement agencies to use POST’s definition of biased conduct in any investigation into a bias-related complaint or an incident that involves possible indications of officer bias.

This bill requires POST to develop guidance for local law enforcement departments on performing effective Internet and social media screenings of other applicants.

This bill specifies that the guidance shall include, at a minimum, strategies for identifying applicant social media profiles and for searching for, and identifying, content indicative of potential biases, such as affiliation with hate groups.

COMMENTS

1. POST and Existing Requirements Related to This Bill

POST was established by the Legislature in 1959 to develop minimum recruitment and training standards for California peace officers. As of 1989, all peace officers in California are required to complete an introductory course of training prescribed by POST, and demonstrate completion of that course by passing an examination. According to the POST Web site, the Regular Basic Course Training includes 43 separate topics, ranging from juvenile law and procedure to search and seizure, taught over the course of a minimum of 664 hours of training.² Over the course of the training, individuals are trained not only in policing skills such as crowd control, evidence collection and patrol techniques, they are also given instruction in criminal law, requiring specific knowledge of various Penal Code and constitutional provisions.

Existing law contains several provisions intended to minimize and respond to bias among peace officers. AB 846 (Burke, Ch. 322, Stats. of 2020), which was inadvertently repealed,³ established a requirement that peace officers be free from any bias against race or ethnicity, gender, nationality, religion, disability, or sexual orientation that might adversely affect the exercise of the powers of a peace officer. Further, POST currently provides mandatory training for peace officers on implicit bias, which must “stress understanding and respect for racial, identity, and cultural differences, and development of effective, noncombative methods of carrying out law enforcement duties in a diverse racial, identity, and cultural environment.”⁴ Additionally, existing law, established by SB 2 (Bradford, Ch. 409, Stats. of 2021), provides a process whereby peace officers who have engaged in serious misconduct can be decertified, where “serious misconduct” includes “demonstrating bias on the basis of race, national origin, 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.”⁵

² <http://post.ca.gov/regular-basic-course-training-specifications.aspx>

³ See fn. 1 above.

⁴ Penal Code §13519.4

⁵ Penal Code §13510.8(b).

2. Recent State Audit

In April 2022, the California State Auditor released a report entitled, “Law Enforcement Departments Have Not Adequately Guarded against Biased Conduct,” which presented the findings of an audit of five law enforcement departments throughout the state.⁶ As part of the audit, the State Auditor reviewed a selection of five internal investigations at each department, reviewed the public social media accounts of approximately 450 officers, and examined agency responses to incidents and allegations of biased conduct. The audit resulted in the following findings:

- “We identified some officers at each of the five law enforcement departments we reviewed [...] who had engaged in biased conduct.”
- “Of the about 450 officers who had public social media accounts, 17 officers had posted biased statements or content. The posts we identified either promoted negative stereotypes or contained deliberately hateful and derogatory speech directed at groups of people.”
- “We also reviewed selected internal investigations and public social media accounts to determine whether any officers were members of hate groups. [...] Although we did not identify evidence that any officers were members of hate groups, six officers posted content suggesting that they support groups with problematic principles or activities.”
- “We found that each of the local departments had not appropriately addressed indications of bias when they occurred,” and that local departments’ investigations of biased conduct “relied heavily on the officers’ denials that bias influenced their actions, without considering whether an officer’s conduct created the reasonable appearance of bias.”

The audit concluded that, as a result of the deficiencies in the departments’ investigative practices, “they are at higher risk for failing to identify instances when their officers engage in biased conduct and failing to take action to prevent those officers from engaging in biased conduct in the future.” Further, the report suggested that “greater statewide oversight could increase law enforcement departments’ adoption of best practices for addressing bias,” and made several recommendations for legislative action, including:

- 1) Require that POST, in the course of its regular audits of local law enforcement departments’ hiring processes, determine whether the departments conduct oral interviews that incorporate assessments of officer applicants’ ability to interact with a diverse community and interviews of secondary references.
- 2) Require that POST develop guidance for local law enforcement departments on performing effective Internet and social media screening of applicants and specify in state

⁶ “Law Enforcement Departments Have Not Adequately Guarded Against Biased Conduct.” *California State Auditor*. Published April 2022. <http://auditor.ca.gov/pdfs/reports/2021-105.pdf> ; the agencies examined were the California Department of Corrections and Rehabilitation, the Los Angeles County Sheriff’s Department, the San Bernardino Police Department, the San Jose Police Department, and the Stockton Police Department.

law that departments may request that applicants identify their public social media accounts.

- 3) Require that officers receive training on various topics related to community engagement, cultural awareness and biased conduct.
- 4) Create a definition of biased conduct that departments must use when investigating any bias-related complaint or any incident that involves possible indications of officer bias.
- 5) Require law enforcement departments that analyze officer conduct based on this definition to reach one of the existing formal determinations in state law about whether an allegation is true, and to document a rationale for reaching the determination.
- 6) Require DOJ to develop standard investigative protocols for evaluation of possible biased conduct, and require POST to develop training on how to properly conduct investigations of biased conduct.⁷

This bill enacts two of the audit's recommendations, numbers (2) and (4) in the list above, requiring POST to 1) develop a definition of biased conduct which must be used in law enforcement investigations into bias-related complaints and 2) develop guidance for local law enforcement agencies on performing effective Internet and social media screening of officer applicants. This bill requires that the definition of "biased conduct," at a minimum, include the following four components:

- Biased conduct includes conduct resulting from implicit and explicit biases.
- Conduct is biased if a reasonable person would conclude so using the facts at hand.
- An officer need not admit biased or prejudiced intent for conduct to reasonably appear biased.
- Biased conduct may occur in an encounter with the public, with other officers, or online, such as conduct on social media.

3. Reasonable Person Standard

This bill requires that the definition of "biased conduct" include, at minimum 4 components, one of which that "conduct is biased if a reasonable person would conclude so using the facts at hand." The "reasonable person" standard is a common form in the American legal system, though is most predominant in civil tort cases involving negligence. The term can be highly subjective and its meaning may change from context to context, or even case to case. In order to ensure that the "reasonable person" standard, as applied in this bill, achieves the intended objective to accurately defined biased conduct, the Author may wish to consider working with stakeholders to amend the bill accordingly.

4. Related Legislation

⁷ *Id.* at 5-7. This list is not exhaustive of the recommendations made by the State Auditor – see the report pp. 5-11 for the balance of these recommendations.

AB 655 (Kalra) requires law enforcement agencies to investigate current and prospective peace officers regarding membership in hate groups, participation in hate group activity, or advocacy of public expressions of hate, as specified, and provide that certain findings would disqualify a person from employment as a peace officer. AB 655 passed out of this committee on June 21.

5. Argument in Support

“CDSA is pleased to support AB 2547 (Nazarian), which would create targeted rent subsidies to prevent and end homelessness among older adults and people with disabilities Act. Housing stabilization subsidies would enable an estimated 20,000-25,000 older adults and people living with disabilities to access or keep their housing on an annual basis. The subsidies would be made available to acutely low-income Californians who are either experiencing homelessness or are at imminent risk of homelessness and allowing enrollees to afford housing that exists in the private market or in non-profit affordable projects. Californians with disabilities face a greater risk of falling into homelessness and would benefit from this critical investment.”

-- END --