



# Training Bulletin

## SANTA BARBARA POLICE DEPARTMENT



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## Senate Bill 2 (SB 2)

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### **Purpose:**

The purpose of this training bulletin is to inform department personnel of Senate Bill 2. Some provisions will go into effect on January 1, 2022; other provisions will have a later effective date.

### **Summary - Senate Bill 2:**

On September 30, 2021, Senate Bill 2 (SB 2) was signed into law by Governor Gavin Newsom. This bill will significantly impact law enforcement agencies across the state. The bill's stated intent is to increase accountability for misconduct by peace officers. In doing so, the bill makes five (5) significant changes, each of which will be discussed in more detail. SB2 will:

- Create a process for POST to revoke peace officers' certifications such that those individuals will be disqualified from peace officer employment in California;
- Expand the list of circumstances that will disqualify a person from employment as a peace officer.
- Requires law enforcement agencies to investigate all complaints or claims of serious misconduct by peace officers regardless of whether the subject officer(s) is/are still employed by the agency.
- Requires law enforcement agencies to report to POST all complaints, claims, allegations, and findings of serious misconduct.
- Removes some immunity provisions for peace officers and their employing agencies in civil rights lawsuits brought under the *Tom Bane Civil Rights Act*.

### **Peace Officer Decertification:**

Currently, POST has the authority to cancel a certificate that was awarded in error or obtained fraudulently, but cannot otherwise cancel a previously issued certificate. SB 2 significantly expands POST's authority in a variety of ways.

First and most notably, SB 2 requires law enforcement agencies to employ as peace officers only those individuals who hold a current and valid Basic POST Certificate. It also requires POST to revoke certification when an individual has become ineligible to hold office as a peace officer under Government Code §1029, or when an individual has been terminated for cause, or otherwise engaged in, "serious misconduct."

SB 2 leaves the exact definition of "serious misconduct" open to interpretation by POST. However, the bill does specify that the term shall at a minimum include the following:

- Dishonesty, including tampering with, falsifying, destroying, or concealing evidence, and tampering with data recorded by a BWC or other device.

- Intimidating witnesses, knowingly obtaining a false confession, or knowingly making a false arrest.
- Excessive or unreasonable force.
- Sexual assault.
- Demonstrating bias on the basis of any legally protected status.
- Egregious or repeated violations of any law inconsistent with a peace officer's duties.
- Participation in a "law enforcement gang."
- 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.

Second, it authorizes POST to conduct investigations to determine the fitness of any person to serve as a peace officer in California, and to conduct audits of agencies that employ peace officers. To do so, the bill establishes a Peace Officer Standards Accountability Division ("Division") with POST, with the responsibility to review investigations conducted by law enforcement agencies, and to conduct its own investigations into misconduct that could provide grounds for suspension or revocation of a peace officer's certification. This Division will also have the responsibility to make findings and recommendations to the Commission, to conduct administrative proceedings seeking suspension or revocation, and to accept complaints from members of the public or law enforcement agencies.

The bill also amends Penal Code Section 832.7 (*Pitchess* statute) to allow disclosure to POST of otherwise confidential peace officer personnel records.

Third, SB 2 directs the Governor to establish a Peace Officers Standards Accountability Board no later than January 1, 2023. The purpose of the Board will be to hear the findings and recommendations from the investigative division and make recommendations on decertification to the POST commission. The Board will consist of nine members serving a three year term, all but two of whom are appointed by the Governor:

- One current or former peace officer with command experience.
- One current or former peace officer with management experience in internal investigations or disciplinary proceedings of peace officers.
- Two members of the public with experience in police accountability issues working at nonprofit or academic institutions.
- Two members of the public with experience in police accountability issues working in community-based organizations.
- Two members of the public, with "strong consideration" given to individuals who have been subjected to wrongful use(s) of force by a peace officer, or surviving family members of a person killed by wrongful use(s) of force by a peace officer.
- One attorney with professional experience involving oversight of police officers.

The six members of the public and the attorney may not be former peace officers.

SB 2 requires POST to notify the head of the law enforcement agency under the following circumstances:

- Any time the Commission launches an investigation into one of the agency's officers (unless doing so would interfere with the investigation).
- Any time such investigation finds grounds to initiate decertification proceedings.
- Any time the Commission decides to take action.
- Any time a hearing results in decertification or suspension.

## **Expansion of Disqualification Criteria:**

SB 2 amends Government Code §1029 to exclude the following individuals from peace officer employment:

- An individual discharged from the military after adjudication by a military tribunal for committing an offense that would have been a felony if committed in California.
- An individual convicted of felony (including by a guilty or nolo contendere plea) will remain disqualified even if a later court vacates/expunges/reverses the conviction, unless the court finds that individual to be factually innocent.
- An individual convicted of any one of several specific crimes of dishonesty, or conduct in another jurisdiction that would have constituted one of those crimes if committed in California. This includes, but is not limited to, bribery, corruption, perjury, falsifying evidence, witness tampering, forging/falsifying government records, and tampering with the jury or jury selection process.
- An individual whose POST certificate was revoked (or denied) or who voluntarily surrendered the certificate.

Additionally, the California DOJ is required to submit to POST any disqualifying felony or misdemeanor conviction for all persons known to be current or former peace officers.

## **Administrative and Reporting Requirements for Law Enforcement Agencies:**

SB 2 imposes a number of requirements on both state, county, and municipal law enforcement agencies. Most of these requirements do not take effect until January 1, 2023, or later.

### **Reporting Requirements**

Beginning On January 1, 2023, all agencies that employ peace officers are required to begin submitting reports to POST any time one of the following occurs:

- The agency employs, appoints, terminates, or separates from employment any peace officer, including involuntary terminations, resignations, and retirements.
- A complaint, charge, or allegation of conduct is made against a peace officer employed by the agency that could result in decertification.
- A civilian oversight entity or review board, civilian police commission, police chief, or civilian inspector general makes a finding or recommendation that a peace officer employed by the agency engaged in conduct that could result in decertification.
- The final disposition of an investigation determines that a peace officer engaged in conduct that could result in decertification, regardless of the discipline imposed (if any).
- A civil judgment or court finding is made against a peace officer based on conduct that could result in decertification, or a settlement is reached in civil case against a peace officer or the employing agency based on allegations of officer conduct that could result in decertification.

In each case, an agency will have ten (10) days to make the relevant reports. The bill does not specify a particular form or format for these reports, but directs POST to issue further guidance and adopt appropriate forms.

Although reporting does not begin until January 2023, it does apply to events that occurred before January 2023. SB 2 specifically requires agencies to report any instance of a listed event that took place between January 1, 2020, and January 1, 2023. For such reports, the reporting deadline will be July 1, 2023.

Investigative and Record Keeping Requirements:

Beginning January 1, 2023, all law enforcement agencies are required to complete any investigation into allegations of “serious misconduct” (conduct that could subject a peace officer to decertification) regardless of the employment status of the officer. Should an officer resign, retire, be released from probationary employment, terminated on unrelated grounds, or separate from employment for any other reason so that no disciplinary action could take place, the agency is still required to complete the investigation.

Any time an agency has reported to POST a complaint, charge or allegation of serious misconduct, the agency must retain the investigation in its entirety for at least two years after making the report. The agency must make these records available for inspection by POST upon request.

Background check requirement:

Any time an agency employs or appoints a peace officer who has previously worked as a peace officer for another agency, the hiring agency is required to contact POST to inquire as to the facts and reasons the officer was separated from any previous employing agency. POST is then required to respond with any relevant information in its possession.

**Removal of Immunity for Civil Rights Cases:**

Under current law, the *Tom Bane Civil Rights Act of 1987*, Civil Code §52.1, allows individuals to bring a civil claim for damages if their constitutional rights have been interfered with, or attempted to be interfered with. However, current law also contains a number of provisions that provide public employees and government agencies with qualified immunity from liability in civil cases.

SB 2 adds a provision to the *Bane Act* that would eliminate certain immunity provisions. Specifically, the following immunity provisions would no longer apply to civil actions brought under the *Bane Act* against peace officers or directly against a public agency that employs them:

- Government Code Section 821.6, which provides immunity to a public employee “for injury caused by his instituting or prosecuting any judicial or administrative proceeding within the scope of his employment, even if he acts maliciously and without probable cause.”
- Government Code Section 844.6, which provides limited immunity to public entities for injuries to, or caused by, a prisoner (subject to a variety of existing exceptions).
- Government Code Section 845.6, which provides limited immunity to public entities and public employees for injuries caused by a public employee’s failure to obtain medical care for a prisoner in their custody.

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