
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair

2021 - 2022 Regular

Bill No: AB 655 **Hearing Date:** June 21, 2022
Author: Kalra
Version: January 24, 2022
Urgency: No **Fiscal:** Yes
Consultant: AB

Subject: *California Law Enforcement Accountability Reform Act*

HISTORY

Source: San Jose State University Human Rights Institute
California Faculty Association

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
SB 776 (Skinner, 2019), died on Assembly Floor Inactive File

Support: California Attorneys for Criminal Justice; California Public Defenders Association; Committee for Law Enforcement Accountability Now (CLEAN); Equality California; National Association of Social Workers, California Chapter; Oakland Privacy

Opposition: None known

Assembly Floor Vote: 48 - 18

PURPOSE

The purpose of this bill is to require 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.

Existing law, the United States Constitution, provides that Congress shall make no law abridging the freedom of speech. (U.S. Const. Amend. I.)

Existing law, the California Constitution, provides that every person may freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of this right and that a law may not restrain or abridge liberty of speech or press. (Cal. Const., Art. I, § 2, subd. (a).)

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, which 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 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 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).)

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 requires each state and local agency that employs peace officers shall annually report data to the Department of Justice (DOJ) on all stops conducted by that agency’s peace officers. (Gov. Code, § 12525.5, subd. (a)(1).)

Existing law specifies that each agency that employs 1,000 or more peace officers shall issue its first round of reports on or before April 1, 2019. Each agency that employs 667 or more, but less than 1,000, peace officers shall issue its first round of reports on or before April 1, 2020. Each agency that employs 334 or more, but less than 667, peace officers shall issue its first round of reports on or before April 1, 2022. Each agency that employs one or more, but less than 334, peace officers shall issue its first round of reports on or before April 1, 2023. (Gov. Code, § 12525.5, subd. (a)(2).)

Existing law requires the reports above to include specified information, including the perceived race or ethnicity, gender, and age of the person stopped. (Gov. Code, § 12525.5 (b).)

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.

This bill requires that any background investigation of a candidate for a peace officer position shall include an inquiry into whether the candidate has engaged or is engaging in membership in a hate group, participation in any hate group activity or advocacy of public expressions of hate.

This bill provides that the hiring agency shall deny employment to a candidate for a peace officer position if, during a preemployment background it is determined that in the past 7 years and since 18 years of age, the candidate has engaged in membership in a hate group, participation in any hate group activity, or advocacy of public expressions of hate.

This bill provides that a candidate for a peace officer position shall not be ineligible to be hired pursuant to this bill if the candidate has ceased all activities related to hate groups and public expressions of hate and at least 7 years have passed since the last such activity.

This bill requires any public agency that employs peace officers to investigate, or cause to be investigated by the appropriate oversight agency, any internal complaint or complaint from a member of the public that alleges, with sufficient particularity to investigate the matter, that a peace officer employed by that agency has in the previous seven years and since 18 years of age, engaged in membership in a hate group, participation in any hate group activity or advocacy of any public expressions of hate.

This bill provides that an agency shall remove from employment as a peace officer, any peace officer against whom a complaint described above is sustained.

This bill mandates that the Department of Justice shall adopt and promulgate guidelines for the investigation and adjudication of complaints described above by a public agency or oversight agency.

This bill provides that nothing in the provision regarding the investigation of internal or public complaints authorizes or requires adverse action to be taken against any peace officer who engages in any activities described above as part of an undercover assignment, as specified, or in any undercover work as part of any bona fide academic or journalistic research.

This bill provides that notwithstanding existing law, any record relating to an investigation of a complaint described above in which a sustained finding was made by the public agency or oversight agency that a peace officer has engaged in membership in a hate group, participation in any hate group activity, or advocacy of public expressions of hate shall not be confidential and shall be made available for public inspection.

This bill provides that a record disclosed pursuant to the provision above may be redacted as follows:

- To remove personal data or information, such as a home address, telephone number, or identities of family members;
- To preserve the anonymity of complainants and witnesses;
- To protect confidential medical, financial, or other information of which disclosure is specifically prohibited by federal law or would cause an unwarranted invasion of personal privacy that clearly outweighs the strong public interest in records about

misconduct and serious use of force by peace officers and custodial officers; and,

- Where there is a specific, articulable, and particularized reason to believe that disclosure of the record would pose a significant danger to the physical safety of the peace officer or another person.

This bill defines several terms for the purposes of its provisions, including:

- “Genocide” means any of the following acts committed with specific intent to destroy, in whole or substantially in part, a national, ethnic, racial, or religious group through means including killing or causing serious bodily injury to members of the group, causing permanent impairment of the mental faculties of members of the group through drugs, torture, or similar means, subjecting the group to conditions of life that are intended to cause the physical destruction of the group, in whole or in part, imposing measures intended to prevent births within the group, or forcibly transferring children of the group to another group.
- “Hate group” means an organization that supports, advocates for, threatens, or practices genocide or the commission of hate crimes.
- “Membership in a hate group” means being, or holding oneself out as, a member of a hate group with the intent to further the unlawful aims of the group.
- “Participation in any hate group activity” means active and direct involvement in, or coordination or facilitation of, any hate crime by hate group members.
- “Peace officer” means a person described within Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, who is employed by an agency or department of the state, or any political subdivision thereof, that provides uniformed police services to members of the public including, without limitation, a municipal police department, a county sheriff’s department, the California Highway Patrol, the University of California, California State University, or any California Community College police department, and the police department of any school district, transit district, park district, or port authority. “Peace officer” also includes any state or local correctional or custodial officer, and any parole or probation officer.
- “Public expression of hate” means any statement or expression to another person, including any statement or expression made in an online forum that is accessible to another person, that advocates for, supports, or threatens to commit genocide or any hate crime or that advocates for or supports any hate group.
- “Sustained” means a final determination by the investigating agency following an investigation, or, if adverse action is taken, a final determination by a commission, board, hearing officer, or arbitrator, as applicable, following an opportunity for an administrative appeal, as specified, that the allegation is true.

This bill establishes legislative findings and declarations that it furthers the purposes of specified constitutional provisions and that the public has a strong, compelling interest in law enforcement transparency because it is essential to having a just and democratic society.

COMMENTS

1. Need for This Bill

According to the Author:

Over the past fifteen years, the FBI has identified organizations committed to ‘domestic terrorism’ that include militia extremists and white supremacist extremists with active links to law enforcement. Without any coordinated federal response to this prevalent issue, state action is long overdue. Sheriff’s departments across our state have been plagued by texting, email, and social media scandals where officers exchanged racist and homophobic messages. Continued failure to address extremism, racism, and bias among peace officers enables this behavior to continue and contributes to the erosion of public confidence in law enforcement.

To increase public trust in law enforcement AB 655 will help root out those who would jeopardize public safety with their extremist and violent behavior. Specifically, The CLEAR Act would ensure that all peace officers in the state of California who apply for employment undergo a background check that includes examining whether they have participated in a hate group or advocated for public expressions of hate or violence. Furthermore, discovery of the aforementioned behavior can become grounds for disciplinary review and termination.

2. Recent State Audit on Biased Conduct by Peace Officers

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.² 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

² “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.

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 makes several related recommendations.³

As this report was published after the major provisions of this bill were introduced, the bill does not incorporate the audit’s recommendations, but nevertheless seeks to address one of the topics examined in the audit – membership in hate groups and the espousal of ideologies related to those groups. There is, of course, a clear distinction between biased conduct and hate group affiliation. Still, the Author may wish to review the report and amend the bill to include one or several of its recommendations.

3. Effect of This Bill

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,⁴ 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. POST 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.”⁵ 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.”⁶

This bill creates a distinct but related process by which a current or prospective peace officer could be removed from or denied employment if an investigation reveals current or past participation in a hate group, subject to specified timeframes and exceptions. Specifically, this bill requires that a candidate for a peace officer position be investigated for any current or past membership in a hate group or participation in a hate group, or for making any public expression of hate. However, the investigation would be limited to those actions which took place within

³ *Id.*, at pp. 1-4; recommendations on pp. 5-11.

⁴ See fn. 1 above.

⁵ Penal Code §13519.4

⁶ Penal Code §13510.8(b).

the last seven years and would only include activity and statements made subsequent to the candidate's 18th birthday. Candidates are still eligible for employment as peace officers if they have ceased the specified hate-related activity and at least 7 years have passed since the activity.

For current peace officers, this bill requires employing agencies or oversight agencies to investigate any sufficiently detailed internal or public complaint that an officer, sometime in the 7 years prior and since the age of 18, engaged in the specified hate-related activity. If the complaint is sustained after an investigation and any subsequent hearings as required by due process, the officer must be removed. This provision contains an exception for activities undertaken in the course of undercover work.

Finally, this bill requires the public disclosure of records related to sustained complaints against officers, which may be redacted to preserve the confidentiality of the officer's personal information, the anonymity of complainants and witnesses, or the physical safety of an officer or other person who may be in danger as a result of disclosure.

4. First Amendment Considerations

Both the United States Constitution and the California Constitution guarantee the right to freedom of speech. That right, however, is qualified for public employees. For many years, "the unchallenged dogma was that a public employee had no right to object to conditions placed upon the terms of employment – including those which restricted the exercise of constitutional rights."⁷ That view has become more nuanced over time, and it is now clear that there are circumstances in which a public employee, such as a peace officer, may validly object to conditions of employment that abridge their constitutional rights like the freedom of speech. In 2006, the United States Supreme Court established the current standard to trigger First Amendment protection for government employee speech.⁸ To be protected, the speech must meet three specific criteria: 1) it must be about a matter of public concern; 2) it must be made as a private citizen and not as part of the employee's official duties; and 3) the interests of the employee in the speech must outweigh the interests of the employer in the safe, efficient, and effective accomplishment of its mission and purpose.⁹ This third prong is the most difficult for police officers to overcome in light of the public safety mission and purpose of a law enforcement agency.¹⁰

This bill generally prohibits prospective and current officers from membership in a hate group, participation in hate group activity or advocacy of any public expressions of hate, as long as that activity took place after their 18th birthday and within 7 years of the investigation into such activity. If challenged in court, the issue would likely be whether an off-duty officer's freedom to participate in the activity specified in the bill outweighs the government's interest in ensuring that the police are perceived as enforcing the law fairly and maintaining respect for law

⁷ See *Connick v. Myers*, 461 U.S. 138, 143.

⁸ *Garcetti v. Ceballos* (2006) 547 U.S. 410

⁹ See *City of San Diego v. Roe* (2004) 543 U.S. 77, 80 [there must be a sufficient nexus between the officer's conduct and the impact of that conduct on the agency in order to discipline the officer without violating the officer's First Amendment right.]

¹⁰ *Papps v. Giuliani* (2nd Cir. 2002) 290 F.3d 143 ["The effectiveness of a city's police department depends on the perception in the community that it enforces the law fairly...if the department treats a segment of the population...with contempt, so that the particular minority comes to regard the police as oppressor rather than protector, respect for law enforcement is eroded and the ability of police to do its work in the community is impaired."]

enforcement in the community. Even without a specific fact pattern, it is difficult to conceive of a court in such a case ruling that an officer's free speech rights with regard to hate-related activity, as defined in this bill, outweighs the government's interest in preserving the integrity of police agencies. Accordingly, this bill's requirements seem to fit within the constraints of the First Amendment.

5. Argument in Support

According to the California Faculty Association, a co-sponsor of the measure:

After the insurrection we witnessed on January 6, 2021 at the U.S. Capitol building by right wing extremists with the apparent cooperation, participation, and support of some law enforcement and military personnel, the threat that extremist infiltration poses to equal justice and the rule of law is more evident than ever before. Continued failure to address extremism, racism, and bias among peace officers contributes to the erosion of public confidence in the legitimacy and fairness of our justice system.

The CLEAR Act would ensure that candidates applying for employment as peace officers in the state of California undergo a background check that includes screening whether that individual holds official membership in a hate group or has participated in public expressions of hate or violence. Additionally, discovery of these expressions, membership, or participation with hate groups can become grounds for disciplinary review and termination of peace officers.

CFA believes that **AB 655** will increase public trust in law enforcement as it roots out those who would jeopardize public safety with extremist and violent behavior.

-- END --