
SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair
2021 - 2022 Regular Session

AB 655 (Kalra) - California Law Enforcement Accountability Reform Act

Version: January 24, 2022

Urgency: No

Hearing Date: August 1, 2022

Policy Vote: PUB. S. 4 - 0

Mandate: Yes

Consultant: Matthew Fleming

Bill Summary: AB 655 would require law enforcement agencies to investigate current and prospective peace officers regarding membership and participation in hate groups and expressions of hate, as specified. The bill would provide that certain findings resulting from such investigations would disqualify a person from employment as a peace officer.

Fiscal Impact:

- **DOJ:** The Department of Justice (DOJ) reports costs of \$235,000 in Fiscal Year (FY) 2022-23, \$236,000 in FY 2023-24, and \$28,000 annually thereafter (Special Fund – Legal Services Revolving Fund, General Fund).*
- **CDI:** The Department of Insurance (CDI) reports costs of approximately \$11,000 in FY 2022-23, \$28,000 in FY 2023-24, and \$10,000 annually thereafter (Special Fund – Insurance Fund).
- **CCCCO:** The California Community Colleges Chancellor's Office (CCCCO) reports ongoing costs in the low hundreds of thousands in local assistance for colleges to conduct investigations (Proposition 98 General Fund). Actual costs will depend on the number of complaints received and whether the investigation is referred to an outside agency. The CCCCCO also reports minor state operations costs for implementation, and minor local assistance costs to expand preemployment background checks.
- **Local Costs:** Unknown potentially reimbursable state-mandated costs in the hundreds of thousands of dollars for investigation and termination proceedings that must comply with POBOR - the Public Safety Officer's Procedural Bill of Rights (General Fund).*

*See Staff Comments for additional detail.

Background: 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. 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 findings and conclusions of the State Auditor indicated that some officers at each of the five law enforcement departments reviewed

had engaged in biased conduct, there were numerous postings on social media by peace officers that promoted negative stereotypes or contained deliberately hateful and derogatory speech directed at groups of people, and that local departments had not appropriately addressed indications of bias when they occurred.

This bill creates 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 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.

Proposed Law:

- 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.
- 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.
- 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.
- 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.

- Provides that an agency shall remove from employment as a peace officer, any peace officer against whom a complaint described above is sustained.
- Requires the DOJ to adopt and promulgate guidelines for the investigation and adjudication of complaints described above by a public agency or oversight agency.
- Specifies 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.
- Provides that 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. Provides for redaction of such records in specified circumstances.

Staff Comments: AB 655 requires the DOJ to adopt and promulgate guidelines for the investigation and adjudication of complaints by local agencies. The Civil Rights Enforcement Section (CRES) within DOJ's Public Rights Division is responsible for promulgating regulations and will require an additional 1.0 Deputy Attorney General (DAG) and the legal complement of 1.0 Legal Secretary from January 1, 2023 through December 31, 2023. Additionally, the Employment and Administrative Mandates Section (EAM), within the Civil Law Division, anticipates an increase in workload providing advice to state agencies including California Highway Patrol in interpreting the law as well as representing state agencies in Public Rights Act litigation matters involving investigation upon the enactment of AB 655. EAM's Deputy Attorney General workload is estimated to increase by an additional 150 hours in FY 2022-23 and 300 hours in FY 2023-24 and ongoing. These costs would impact the Legal Services Revolving Fund, however, costs would be reimbursable through direct billings to client agencies.

This bill would require investigation, and disciplinary proceedings of peace officers who are covered under the POBOR (Gov. Code § 330, *et. seq.*). POBOR requires numerous procedural requirements to be observed during the investigatory process. The Commission on State Mandates has determined that a number of provisions of POBOR mandated a new or higher level of service by local jurisdictions and is subject to state reimbursement. Reimbursable activities include some or all parts of administrative activities, administrative appeal, interrogations, and adverse comment. The existing POBOR mandates, POBOR I and POBOR II, result in state-reimbursable costs to local governments in the millions of dollars annually. The state's backlog of reimbursements for POBOR I mandate claims is about \$102.6 million cumulatively from FY 2004-05 to FY 2019-20 and about \$7.7 million for POBOR II mandate claims cumulatively from FY 2002-2003 to FY 2019-2020, totaling a backlog of \$110.3 million

through FY 2019-2020. Although prior mandate reimbursements, POBOR I and POBOR II, have been deferred for several years, any costs incurred by the state due to this measure would be added to the existing amount owed, which exceeds \$100 million.

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