

Date of Hearing: April 13, 2021

Chief Counsel: Gregory Pagan

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Reginald Byron Jones-Sawyer, Sr., Chair

AB 718 (Cunningham) – As Introduced February 16, 2021

SUMMARY: Requires a law enforcement agency conducting an administrative investigation into an allegation of misconduct by a peace officer to complete its investigation and make a finding, as specified, regardless of whether the officer voluntarily separates from the agency before the investigation is completed. Specifically, **this bill:**

- 1) Provides, commencing January 1, 2022, if a law enforcement agency or oversight agency initiates an administrative investigation into an allegation of an incident involving the discharge of a firearm at a person by a peace officer or custodial officer, or an incident in which the use of force by a peace officer or custodial officer against a person resulted in death or great bodily injury, the agency shall complete its investigation and reach a finding, either sustained, not sustained, exonerated, or unfounded, regardless of whether the officer voluntarily separates from the agency before the investigation is completed.
- 2) States, commencing January 1, 2022, if a law enforcement agency or oversight agency initiates an administrative investigation into an allegation of sexual assault as defined in this chapter, the agency shall complete its investigation and reach a finding, either sustained, not sustained, exonerated, or unfounded, regardless of whether the officer voluntarily separates from the agency before the investigation is completed.
- 3) Provides if a law enforcement agency or oversight agency initiates an administrative investigation into an allegation of dishonesty by a peace officer or custodial officer directly relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by, another peace officer or custodial officer, including, but not limited to, any sustained finding of perjury, false statements, filing false reports, destruction, falsifying, or concealing of evidence, the agency shall complete its investigation and reach a finding, either sustained, not sustained, exonerated, or unfounded, regardless of whether the officer voluntarily separates from the agency before the investigation is completed.
- 4) States if any agency other than an officer's employing agency conducts an investigation into any of the above misconduct, that agency shall disclose its findings with the employing agency no later than the conclusion of the investigation.
- 5) Defines "exonerated" to mean that the investigation clearly established that the actions of the peace officer or custodial officer that formed the basis of the complaint are not violations of law or department policy.
- 6) Defines "Not sustained" to mean an investigation failed to produce sufficient evidence to prove or disprove the allegations the allegations made in the complaint.

EXISTING LAW:

- 1) Requires peace officers to meet all of the following minimum standards (Gov. Code, § 1031):
 - a) Be a citizen of the United States or a permanent resident alien who is eligible for and has applied for citizenship, except as specified;
 - b) Be at least 18 years of age;
 - c) Be fingerprinted for purposes of search of local, state, and national fingerprint files to disclose a criminal record;
 - d) Be of good moral character, as determined by a thorough background investigation;
 - e) 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;
 - f) 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:
 - i) Physical condition shall be evaluated by a licensed physician and surgeon;
 - ii) Emotional and mental condition shall be evaluated by either of the following:
 - (1) 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,
 - (2) A psychologist licensed by the California Board of Psychology with a specified amount of experience.
- 2) Specifies that the peace officer requirements do not preclude the adoption of additional or higher standards, including age. (Gov. Code, § 1031, subd. (g).)
- 3) Specifies that the following persons are disqualified from being peace officer, except as specified:
 - a) Any person who has been convicted of a felony;
 - b) Any person who has been convicted of any offense in any other jurisdiction which would have been a felony if committed in this state;
 - c) Any person who has been convicted of a crime based upon a verdict or finding of guilt of a felony by the trier of fact, or upon the entry of a plea of guilty or nolo contendere to a

- felony. This paragraph shall apply regardless of whether, the court declares the offense to be a misdemeanor or the offense becomes a misdemeanor by operation of law;
- d) Any person who has been charged with a felony and adjudged by a superior court to be mentally incompetent;
 - e) Any person who has been found not guilty by reason of insanity of any felony;
 - f) Any person who has been determined to be a mentally disordered sex offender; or,
 - g) Any person adjudged addicted or in danger of becoming addicted to narcotics, convicted, and committed to a state institution as specified. (Govt. Code, § 1029, Subd. (a)(1)-(7).)
- 4) States that each law enforcement agency 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. (Pen. Code, § 832.12, subd. (a).)
 - 5) Requires a peace officer seeking employment with a law enforcement agency to give written permission for the hiring department or agency to view his or her general personnel file and any separate file designated by a law enforcement agency. (Pen. Code, § 832.12, subd. (a).)
 - 6) 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.):
 - a) The request is made in writing;
 - b) The request is accompanied by a notarized authorization by the applicant releasing the employer of liability; and,
 - c) The request and the authorization are presented to the employer by a sworn officer or other authorized representative of the employing law enforcement agency.
 - 7) 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).)
 - 8) 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).)
 - 9) 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).)

- 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,
 - b) 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.
- 10) 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).)
- 11) 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).)
- 12) 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).)
- 13) States that each law enforcement agency shall annually furnish to DOJ, 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).)
- a) An incident involving the shooting of a civilian by a peace officer;
 - b) An incident involving the shooting of a peace officer by a civilian;
 - c) An incident in which the use of force by a peace officer against a civilian results in serious bodily injury or death; and,
 - d) An incident in which use of force by a civilian against a peace officer results in serious bodily injury or death.

FISCAL EFFECT: Unknown.

COMMENTS:

- 1) **Author's Statement:** According to the author, "Government officials, including police officers, should not be able to resign in order to avert responsibility and keep potential misconduct hidden from the public's view," said Cunningham. "Bad actors must be held accountable if we are to restore the public's trust in our institutions. Completing investigations into claims of officer misconduct is an important component to rooting out those who wish to abuse their positions of power."

- 2) **Argument in Support:** According to the *California Public Defenders Association*, “Under current law, a police agency will generally conduct an investigation when one of its employee-officers is accused of engaging in professional misconduct. Under California’s police transparency laws, if the investigation results in a sustained finding of serious misconduct, the misconduct becomes a matter of public record, discoverable by the community in which that officer works. (Pen. Code § 832.7.)

“The problem is that the transparency law only applies when a complaint has been *sustained*, meaning that if, for any reason, the investigation is not completed, the misconduct will remain hidden from the public *and* other police agencies. (*Ibid.*) Guilty officers who are being investigated will therefore quit before a sustained finding is made, know this will cause their current employer to immediately end the investigation. These officers will then apply to a *different* police agency, who will hire the officer without knowing about the officer’s history of misconduct.

“AB 718 addresses this problem by requiring police agency employers to complete misconduct investigations, even if the accused officer quits prior to its conclusion. By requiring police agencies to actually determine whether the officer has engaged in misconduct even when the officer tries to hide that finding by resigning early, AB 718 promotes transparency and deters officers who might otherwise engage in misconduct with relative impunity.”

REGISTERED SUPPORT / OPPOSITION:

Support

California Attorneys for Criminal Justice
California News Publishers Association
California Public Defenders Association
California State Sheriffs’ Association
League of Women Voters
Santa Barbara County District Attorney

Opposition

None

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