

Date of Hearing: April 27, 2021  
Counsel: Matthew Fleming

## ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Reginald Byron Jones-Sawyer, Sr., Chair

AB 958 (Gipson) – As Amended March 25, 2021

**As Proposed to be Amended in Committee**

**SUMMARY:** Requires all law enforcements agencies to maintain a policy that prohibits participation in a law enforcement “clique” and makes a violation of that policy grounds for termination. Specifically, **this bill:**

- 1) Defines “law enforcement agency” to mean any department or agency of the state or any local government, special district, or other political subdivision thereof, that employs any peace officer, as specified, that provides uniformed police services to the public.
- 2) Defines “law enforcement clique” means a group of peace officers within a law enforcement agency that engage in a pattern of rogue on-duty behavior that intentionally violates the law or fundamental principles of professional policing, including, but not limited to, the persistent practice of unlawful detention or use of excessive force in circumstances where it is known to be unjustified, falsifying police reports, fabricating evidence, destruction of evidence, targeting persons for enforcement based solely on protected characteristics of those persons, theft, unauthorized use of alcohol or drugs on duty, unlawful or unauthorized protection of other members from disciplinary actions, and retaliation against other officers who threaten or interfere with the activities of the group.
- 3) States that each law enforcement agency shall maintain a policy that prohibits participation in a law enforcement clique.
- 4) States that the policy shall provide that it is grounds for termination for a peace officer to participate in a law enforcement clique and willfully promote, further, or assist the clique in any illicit activity with knowledge that its members engage in, or have engaged in, a pattern of activity described above.
- 5) States that except as specifically prohibited by law, a law enforcement agency shall disclose the termination of a peace officer for participation in a law enforcement clique to another law enforcement agency conducting a pre-employment background investigation of that former peace officer.
- 6) States that any person who has been previously terminated from employment as a peace officer for participation in a law enforcement clique is disqualified from holding office as a peace officer or being employed as a peace officer of the state, county, city, city and county or other political subdivision, whether with or without compensation, and is disqualified from any office or employment by the state, county, city, city and county or other political subdivision, whether with or without compensation, which confers upon the holder or employee the powers and duties of a peace officer.

**EXISTING LAW:**

- 1) States that the following persons are disqualified from holding office as a peace officer or being employed as a peace officer of the state, county, city, city and county, or other political subdivision, whether with or without compensation, and is disqualified from any office or employment by the state, county, city, city and county or other political subdivision, whether with or without compensation, which confers upon the holder or employee the powers and duties of a peace officer:
  - 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, after January 1, 2004, 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, pursuant to subdivision (b) of Section 17 of the Penal Code, 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, as specified;
  - 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, as specified; and,
  - g) Any person adjudged addicted or in danger of becoming addicted to narcotics, convicted, and committed to a state institution, as specified.
- 2) 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).)
- 3) 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. (Pen. Code, §§ 830-832.10 and 13500 et seq.)
- 4) Establishes the Peace Officer Bill of Rights (POBOR). (Gov. Code, § 3300.)
- 5) States that no public safety officer shall be subjected to punitive action, or denied promotion, or be threatened with any such treatment, because of the lawful exercise of the rights granted under this chapter, or the exercise of any rights under any existing administrative grievance

procedure. Nothing in this section shall preclude a head of an agency from ordering a public safety officer to cooperate with other agencies involved in criminal investigations. If an officer fails to comply with such an order, the agency may officially charge him or her with insubordination. (Gov. Code, § 3304 subd. (a).)

- 6) Provides no punitive action nor denial of promotion on grounds other than merit shall be undertaken by any public agency against any public safety officer who has successfully completed the probationary period that may be required by his or her employing agency without providing the public safety officer with an opportunity for administrative appeal. (Gov. Code, § 3304 subd. (b).)
- 7) States no chief of police may be removed by a public agency, or appointing authority, without providing the chief of police with written notice and the reason or reasons therefor and an opportunity for administrative appeal. For purposes of this subdivision, the removal of a chief of police by a public agency or appointing authority, for the purpose of implementing the goals or policies, or both, of the public agency or appointing authority, for reasons including, but not limited to, incompatibility of management styles or as a result of a change in administration, shall be sufficient to constitute "reason or reasons." Nothing in this subdivision shall be construed to create a property interest, where one does not exist by rule or law, in the job of Chief of Police. (Gov. Code, § 3304 subd. (c).)
- 8) Except as specified, no punitive action, nor denial of promotion on grounds other than merit, shall be undertaken for any act, omission, or other allegation of misconduct if the investigation of the allegation is not completed within one year of the public agency's discovery by a person authorized to initiate an investigation of the allegation of an act, omission, or other misconduct. This one-year limitation period shall apply only if the act, omission, or other misconduct occurred on or after January 1, 1998. In the event that the public agency determines that discipline may be taken, it shall complete its investigation and notify the public safety officer of its proposed disciplinary action within that year, except in any of the following circumstances:
  - a) If the act, omission, or other allegation of misconduct is also the subject of a criminal investigation or criminal prosecution, the time during which the criminal investigation or criminal prosecution is pending shall toll the one-year time period.
  - b) If the public safety officer waives the one-year time period in writing, the time period shall be tolled for the period of time specified in the written waiver.
  - c) If the investigation is a multi-jurisdictional investigation that requires a reasonable extension for coordination of the involved agencies.
  - d) If the investigation involves more than one employee and requires a reasonable extension.
  - e) If the investigation involves an employee who is incapacitated or otherwise unavailable.
  - f) If the investigation involves a matter in civil litigation where the public safety officer is named as a party defendant, the one-year time period shall be tolled while that civil

action is pending.

- g) If the investigation involves a matter in criminal litigation where the complainant is a criminal defendant, the one-year time period shall be tolled during the period of that defendant's criminal investigation and prosecution.
  - h) If the investigation involves an allegation of workers' compensation fraud on the part of the public safety officer. (Gov, Code, § 3304 subd. (d).)
- 9) Provides where a pre-disciplinary response or grievance procedure is required or utilized, the time for this response or procedure shall not be governed or limited by this chapter. (Gov, Code, § 3304 subd. (e).)
- 10) States if, after investigation and any pre-disciplinary response or procedure, the public agency decides to impose discipline, the public agency shall notify the public safety officer in writing of its decision to impose discipline, including the date that the discipline will be imposed, within 30 days of its decision, except if the public safety officer is unavailable for discipline. (Gov, Code, § 3304 subd. (f).)
- 11) Specifies, notwithstanding the one-year time period specified, an investigation may be reopened against a public safety officer if both of the following circumstances exist;
- a) Significant new evidence has been discovered that is likely to affect the outcome of the investigation.
  - b) One of the following conditions exist:
    - i) The evidence could not reasonably have been discovered in the normal course of investigation without resorting to extraordinary measures by the agency.
    - ii) The evidence resulted from the public safety officer's pre-disciplinary response or procedure. (Gov, Code, § 3304 subd. (g).)
- 12) States that the Legislature hereby finds and declares that the rights and protections provided to peace officers under this the POBAR constitute a matter of statewide concern. The Legislature further finds and declares that effective law enforcement depends upon the maintenance of stable employer-employee relations, between public safety employees and their employers. In order to assure that stable relations are continued throughout the state and to further assure that effective services are provided to all people of the state, it is necessary that this chapter be applicable to all public safety officers, as defined in this section, wherever situated within the State of California. (Gov, Code, § 3301.)
- 13) States that when any public safety officer is under investigation and subjected to interrogation by his or her commanding officer, or any other member of the employing public safety department, that could lead to punitive action, the interrogation shall be conducted under the following conditions. For the purpose of this chapter, punitive action means any action that may lead to dismissal, demotion, suspension, reduction in salary,

written reprimand, or transfer for purposes of punishment:

- a) Specifies that the interrogation shall be conducted at a reasonable hour, preferably at a time when the public safety officer is on duty, or during the normal waking hours for the public safety officer, unless the seriousness of the investigation requires otherwise. If the interrogation does occur during off-duty time of the public safety officer being interrogated, the public safety officer shall be compensated for any off-duty time in accordance with regular department procedures, and the public safety officer shall not be released from employment for any work missed.
- b) States that the public safety officer under investigation shall be informed prior to the interrogation of the rank, name, and command of the officer in charge of the interrogation, the interrogating officers, and all other persons to be present during the interrogation. All questions directed to the public safety officer under interrogation shall be asked by and through no more than two interrogators at one time.
- c) Provides that the public safety officer under investigation shall be informed of the nature of the investigation prior to any interrogation.
- d) States that the interrogating session shall be for a reasonable period taking into consideration gravity and complexity of the issue being investigated. The person under interrogation shall be allowed to attend to his or her own personal physical necessities.
- e) Provides that the public safety officer under interrogation shall not be subjected to offensive language or threatened with punitive action, except that an officer refusing to respond to questions or submit to interrogations shall be informed that failure to answer questions directly related to the investigation or interrogation may result in punitive action. No promise of reward shall be made as an inducement to answering any question. The employer shall not cause the public safety officer under interrogation to be subjected to visits by the press or news media without his or her express consent nor shall his or her home address or photograph be given to the press or news media without his or her express consent.
- f) Specifies that no statement made during interrogation by a public safety officer under duress, coercion, or threat of punitive action shall be admissible in any subsequent civil proceeding. This subdivision is subject to the following qualifications:
  - i) This subdivision shall not limit the use of statements made by a public safety officer when the employing public safety department is seeking civil sanctions against any public safety officer, including specified disciplinary actions.
  - ii) This subdivision shall not prevent the admissibility of statements made by the public safety officer under interrogation in any civil action, including administrative actions, brought by that public safety officer, or that officer's exclusive representative, arising out of a disciplinary action.
  - iii) This subdivision shall not prevent statements made by a public safety officer under interrogation from being used to impeach the testimony of that officer after an in camera review to determine whether the statements serve to impeach the testimony of

the officer.

- iv) This subdivision shall not otherwise prevent the admissibility of statements made by a public safety officer under interrogation if that officer subsequently is deceased.
- g) States that the complete interrogation of a public safety officer may be recorded. If a tape recording is made of the interrogation, the public safety officer shall have access to the tape if any further proceedings are contemplated or prior to any further interrogation at a subsequent time. The public safety officer shall be entitled to a transcribed copy of any notes made by a stenographer or to any reports or complaints made by investigators or other persons, except those which are deemed by the investigating agency to be confidential. No notes or reports that are deemed to be confidential may be entered in the officer's personnel file. The public safety officer being interrogated shall have the right to bring his or her own recording device and record any and all aspects of the interrogation.
- h) Provides that if prior to or during the interrogation of a public safety officer it is deemed that he or she may be charged with a criminal offense, he or she shall be immediately informed of his or her constitutional rights.
- i) States that upon the filing of a formal written statement of charges, or whenever an interrogation focuses on matters that are likely to result in punitive action against any public safety officer, that officer, at his or her request, shall have the right to be represented by a representative of his or her choice who may be present at all times during the interrogation. The representative shall not be a person subject to the same investigation. The representative shall not be required to disclose, nor be subject to any punitive action for refusing to disclose, any information received from the officer under investigation for non-criminal matters. Specifies that this section shall not apply to any interrogation of a public safety officer in the normal course of duty, counseling, instruction, or informal verbal admonishment by, or other routine or unplanned contact with, a supervisor or any other public safety officer, nor shall this section apply to an investigation concerned solely and directly with alleged criminal activities.
- j) Provides that no public safety officer shall be loaned or temporarily reassigned to a location or duty assignment if a sworn member of his or her department would not normally be sent to that location or would not normally be given that duty assignment under similar circumstances. (Gov, Code, § 3303.)

**FISCAL EFFECT:** Unknown.

**COMMENTS:**

- 1) **Author's Statement:** According to the author, "At the very basic level, every single law enforcement department should prohibit the participation of any of their officers from being in a gang – outside or inside of the workplace. This bill is about proactively rooting out "bad apples" including those who participate, formally or informally, in a type of unacceptable behavior that is damaging to not only our community members, but to the reputation of law enforcement as a whole. Allowing this activity creates an impediment to building and preserving trust between California communities and law enforcement. AB 958 will ensure

that law enforcement agencies have policies in place to terminate any officer who they find out to be a participant in a police gang.”

2) **Law Enforcement Gangs and Cliques:** According to the author, only one law enforcement department in California – the Los Angeles County Sheriff’s Office, the sponsor of this bill – has a policy against officer participation in an inner departmental “clique” or gang. Reports about gangs within the LA county sheriff have been widely reported:

- “Los Angeles Deputy Says Colleagues are Part of Violent Gang” Dazio, NBC, August ,4 2020, available at: <https://www.nbclosangeles.com/news/local/gang-los-angeles-county-sheriffs-deputies-executioners-compton/2407924/>, [as of April 21, 2021].)
- “In L.A. County, Gangs Wear Badges” Cheney-Rice, New York Magazine, September 4, 2020, <https://nymag.com/intelligencer/2020/09/1-a-county-sheriffs-department-has-a-gang-problem.html>, [as of April 21, 2021].)
- “Los Angeles Sheriff’s deputies say gangs targeting ‘young Latinos’ operate within department,” CBS News This Morning, February 2021, available at: <https://www.cbsnews.com/news/los-angeles-sheriffs-deputies-gangs-young-latinos/>, [as of April 21, 2021].)
- “A New Lawsuit Describes a Violent Gang in LA County. Its Members Are Deputy Sheriffs.” P.R. Lockhart, Vox Media, October 11, 2019, available at: <https://www.vox.com/identities/2019/10/11/20910315/banditos-los-angeles-sheriff-department-lawsuit-gangs>, [as of April 21, 2021].)

Allegations of malicious behavior by gangs formed within law enforcement agencies has not been strictly limited to the Los Angeles County Sheriff, (*see e.g.* “Vallejo Police Launch Independent Probe Into ‘Badge Bending’ Allegations,” NBC Bay Area, July 31, 2020, available at: <https://www.nbcbayarea.com/news/local/north-bay/vallejo-police-launch-independent-probe-into-badge-bending-allegations/2336588/>, [as of April 21, 2021].

However, it does appear to be the agency with the most prolific problem. Recently, the Center for Juvenile Law & Policy at Loyola Law School in Los Angeles released a detailed, comprehensive report about the “fifty year history” how sheriff deputy gangs have negatively impacted policing in Los Angeles and infected the fairness of legal proceedings in Los Angeles Superior Court. (“Fifty Years of ‘Deputy Gangs’ in the Los Angeles County Sheriff’s Department: Identifying Root Causes and Effects to Advocate for Meaningful Reforms,” Center for Juvenile Law & Policy LMU Loyola Law School, January 2021, available at: <https://lmu.app.box.com/s/ho3rp9qdbmn9aip8fy8dmmukjjgw5yyc>, [as of April 21, 2021].) The report made a variety of policy recommendations for the Los Angeles Sheriff Department to deal with the problem of law enforcement gangs and their unlawful behavior, the first of which was to enforce a policy prohibiting deputies from participating in subgroups that violate the rights of others or have violated the rights of others in the past. This bill would require all law enforcement agencies in the state to adopt a policy prohibiting participation in law enforcement “cliques,” and would provide that it is grounds for termination for a peace officer to participate in a clique and willfully promote, further, or assist the clique in any illicit activity.

- 3) **Committee Amendments:** As introduced this bill would have more broadly defined the behavior that can constitute a law enforcement clique. It also would have stated that mere participation in a law enforcement clique would be ground for termination even if the participation did not involve engaging in any illegal activity. The amendments proposed by the committee clarify the conduct that can be considered as falling within the purview of a law enforcement clique and require active participation in the clique as well as some kind of behavior that promotes, further, or assists the clique in illicit activity in order to be subject to termination.
- 4) **Argument in Support:** According to the *California Public Defenders Association*: “AB 958 would define a law enforcement clique, a group of law enforcement officers within an agency that engages in a pattern of specified unlawful or unethical on-duty behavior, and would require law enforcement agencies, as specified, to have a policy prohibiting law enforcement cliques and making participation in a law enforcement clique grounds for termination. The bill would require an agency to disclose an officer’s termination for involvement in a law enforcement clique to another law enforcement agency conducting a preemployment background investigation of that officer, as specified. The bill would also make a person who has been terminated from employment as a peace officer for involvement with a law enforcement clique ineligible to be a peace officer.

“Law enforcement gangs or cliques have long been a problem for law enforcement and for the communities they police. As far back the 1980s members of the Los Angeles Sheriff’s Department were identified as members of the Viking gang. In 1988, one year after joining the Vikings, deputy Paul Tanaka was named in a wrongful death suit that the LASD settled for almost \$1 million; the case involved Tanaka’s shooting of a young Korean man. A Sheriff’s Deputy told the Los Angeles Times that invitation to join the Vikings was considered prestigious, but also meant “you keep your mouth shut and obey the code of silence” about illegal activity by other deputies. Despite alleged efforts by top officials, gang membership still pervades many law enforcement agencies.

“As recently as this past year, there was an investigation into a gang within the Los Angeles Sheriff’s Department known as the Banditos who were involved in an off-duty shooting. A second gang, the Executioners has been responsible for high-profile shootings and out-of-policy beatings.

“These law enforcement gangs are dangerous and violent. No law enforcement officer who is a member of a gang or clique should be permitted to carry a badge and serve the communities of this state. These gang members disparage law enforcement and destroy any prospect of building bridges with community members.”

5) **Related Legislation:**

- a) AB 60 (Salas), would require a peace officer’s certificate to be suspended, revoked, or canceled when the person is ineligible to be a peace officer or when the person has been subject to a sustained termination for serious misconduct, as defined, on or after January 1, 2022. AB 60 is pending in the Assembly Public Safety Committee.
- b) AB 655 (Kalra), would require public agencies employing peace officers to investigate current and prospective peace officers regarding engagement in hate groups, participation

in hate group activities, or public expressions of hate, as specified, and provides that certain findings of those investigations would constitute grounds for denial or termination of employment as a peace officer. AB 655 is pending in the Assembly Appropriations Committee.

- c) SB 2 (Bradford), would grant new powers to the Commission on Peace Officer Standards and Training (POST) to investigate and determine peace officer fitness and to decertify officers who engage in “serious misconduct” and would make changes to the Bane Civil Rights Act to limit immunity as specified. SB 2 is set for hearing on April 27 in the Senate Judiciary Committee.

**6) Prior Legislation:**

- a) SB 731 (Bradford), of the 2019-2020 Legislative Session, would have increased peace officer accountability and created a means of decertifying officers who engage in serious misconduct. SB 731 died without a hearing on the Assembly floor.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Los Angeles County Sheriff's Department (sponsor)  
California Public Defenders Association (CPDA)

**Opposition**

None

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