

Date of Hearing: May 12, 2021

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Lorena Gonzalez, Chair

AB 958 (Gipson) – As Amended April 29, 2021

Policy Committee: Public Safety

Vote: 8 - 0

Urgency: No

State Mandated Local Program: Yes

Reimbursable: Yes

SUMMARY:

This bill prohibits a person from being a peace officer if the person has been previously terminated from employment as a peace officer for participating in a law enforcement clique. Specifically, this bill:

- 1) Defines “law enforcement clique” to mean 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.
- 2) Requires a law enforcement agency maintain a policy that prohibits participation in a law enforcement clique and 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 illegal activity.
- 3) Requires a law enforcement agency to 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 peace officer.

FISCAL EFFECT:

- 1) Costs (General Fund (GF)), possibly in excess of \$150,000, to state agencies employing peace officers including the Department of Justice (DOJ), California Department of Corrections and Rehabilitation (CDCR) and California Highway Patrol (CHP) to update internal policies and practices related to participate in a law enforcement clique that violates the requirements of this bill.
- 2) Unknown, possibly significant reimbursable costs (GF and local funds) to local law enforcement to update policies and procedures pertaining to participation in a law enforcement clique, to the extent a law enforcement agency must terminate a peace officer for participation in a law enforcement clique. Peace officer terminations must comply with the requirements of the Public Safety Officers Procedural Bill of Rights (PSOPBR) and are subject to administrative and judicial due process at costs to local agencies. This bill mandates a peace officer be terminated if found to be a member of the law enforcement clique. GF costs will depend on whether the duties imposed by this bill constitute a

reimbursable state mandate, as determined by the Commission on State Mandates. The Commission on State Mandates has previously ruled local compliance with the PSOPBR constitutes a reimbursable state mandate.

COMMENTS:

1) **Purpose.** According to the author:

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) **PSOPBR.** The PSOPBR (Gov. Code, §§ 3300, et seq.) grants peace officers a greater degree of due process in their employment than other public sector employees. Specifically, peace officers may not be reprimanded, suspended, transferred or terminated without due process. Termination requires written notice, a pre-disciplinary meeting with the supervisor issuing the notice, written notice of final termination and lengthy appeals procedures before neutral arbitrators. It also includes a statutory right to appeal the termination in civil court. This bill requires any officer found to be a member of a law enforcement clique be terminated. However, unless the PSOPBR is amended, peace officers will be entitled to dispute their termination and may prevail at an administrative appeal hearing regardless of any alleged participation in a clique. The decision to terminate a peace officer is detailed and usually considers the strength of the underlying facts, credibility of witnesses and the officer's prior record. Peace officer disciplinary appeals can also be very expensive to taxpayers. Mandating termination without amending the PSOPBR may have limited impact in actual practice.

3) **Related Legislation.**

- a) AB 26 (Holden) prohibits a person from being a peace officer if they have been found by a law enforcement agency to have either used excessive force that resulted in great bodily injury or death or have failed to intercede in that incident as required by a law enforcement agency's policies. AB 26 is pending in this committee.
- b) AB 655 (Kalra) provides that a finding during a pre-employment background investigation of present or past participation in hate group activities shall be grounds for denial of employment as a peace officer. AB 655 is pending in this committee.
- c) AB 750 (Jones-Sawyer), of the 2021-22 Legislative Session, expands the crime of making a false statement in a police report to include any instance where a peace officer makes a false statement to another peace officer if that statement is included in the police report. AB 750 is pending in this committee.