



DEPARTMENT NOTICE

23-036

Published: 3/22/23

Expires: 3/22/26

Senate Bill 2

Senate Bill 2 (“SB 2”) is a broad and complex legislative act that significantly affects law enforcement agencies across California. SB 2's purpose is to increase accountability for misconduct by peace officers and makes five significant changes:

- It creates a process for POST to revoke certifications for peace officers such that those individuals will be disqualified from peace officer employment in California;
- It expands the list of circumstances that will disqualify a person from employment as a peace officer;
- It requires law enforcement agencies to investigate all complaints or claims of serious misconduct by peace officers regardless of whether the subject officer(s) is still employed by the agency;
- It requires law enforcement agencies to report to POST all complaints, claims, allegations, and findings of serious misconduct;
- It removes some immunity provisions for peace officers and their employing agencies in civil rights lawsuits brought under the Tom Bane Civil Rights Act.

Decertification

SB 2 requires POST to revoke certification when an individual has become ineligible to hold office as a peace officer under Government Code section 1029, or when an individual has been terminated for cause for, or otherwise engaged in, “serious misconduct”.

Serious Misconduct Defined:

- Dishonesty relating to the reporting, investigation, or prosecution of a crime, or relating to the reporting of, or investigation of misconduct by, a peace officer or custodial officer, including making false statements, intentionally filing false reports, tampering with, falsifying, destroying, or concealing evidence, perjury, and tampering with data recorded by a body-worn camera or other recording device for purposes of concealing misconduct;
- Abuse of power, including, but not limited to, intimidating witnesses, knowingly obtaining a false confession, and knowingly making a false arrest;
- Physical abuse, including, but not limited to, the excessive or unreasonable use of force;

- Sexual assault;
- Demonstrating bias on the basis of any legally protected status, in violation of law or department policy, or in a manner inconsistent with a peace officer's obligation to carry out their duties in a fair and unbiased manner;
- Acts that violate the law and are sufficiently egregious or repeated as to be inconsistent with a peace officer's obligation to uphold the law or respect the rights of members of the public, as determined by POST;
- Participation in a "law enforcement gang";
- Failure to cooperate with an investigation into potential police misconduct; and
- Failure to intercede when present and observing another officer using force that is clearly beyond that which is necessary, as determined by an objectively reasonable officer under the circumstances,

SB 2 authorizes POST to conduct investigations to determine the fitness of any person to serve as a peace officer in California, and to conduct audits of agencies that employ peace officers.

Criteria Disqualifying Individuals from Holding Office as a Peace Officer

Currently, under Government Code Section 1029, there are numerous circumstances that will disqualify an individual from holding office or being employed as a peace officer in California. Most notably, a person will be disqualified if they have been convicted of a felony, or convicted of a non-felony offense in another jurisdiction that would have been a felony in California.

SB 2 amends Government Code 1029 to exclude the following individuals from peace officer employment:

- An individual discharged from the military after adjudication by a military tribunal for committing an offense that would have been a felony if committed in California, whether or not the person received a criminal conviction for the offense.
- An individual convicted of a felony, including by a guilty plea or a plea of nolo contendere, will remain disqualified even if a later court sets aside, vacates, withdraws, expunges, or otherwise reverses the conviction, unless the court specifically finds the person to be factually innocent of the crime for which they were convicted.
- An individual convicted of any one of several specific enumerated crimes of dishonesty, or conduct in another jurisdiction that would have constituted one of those crimes if committed in California. The listed crimes include, but are not limited to, bribery, corruption, perjury, falsifying evidence, witness tampering, forging or falsifying government records, tampering with a jury or the jury selection process.

- An individual adjudicated to have committed acts that would constitute one of those enumerated crimes in an administrative, military, or civil judicial process that requires at least “clear and convincing evidence.”
- An individual whose POST certificate was revoked (or denied) or who voluntarily surrendered the certification.
- An individual whose name appears in the National Decertification Index or any similar database designated by the federal government and the individual’s certification as a law enforcement officer was revoked for misconduct, or if the individual engaged in serious misconduct that – had they been employed in California – would have resulted in POST revoking their certificate.

Reporting Requirements for Law Enforcement

Beginning on January 1, 2023, SB 2 will require all agencies that employ peace officers to begin submitting reports to POST any time one of the following occurs:

- The agency employs, appoints, terminates, or separates from employment any peace officer, including involuntary terminations, resignations, and retirements.
- A complaint, charge, or allegation of conduct is made against a peace officer employed by the agency that could result in decertification.
- A civilian oversight entity or review board, civilian police commission, police chief, or civilian inspector general makes a finding or recommendation that a peace officer employed by the agency engaged in conduct that could result in decertification.
- The final disposition of an investigation determines that a peace officer engaged in conduct that could result in decertification, regardless of the discipline imposed (if any).
- A civil judgment or court finding is made against a peace officer based on conduct that could result in decertification, or a settlement is reached in civil case against a peace officer or the employing agency based on allegations of officer conduct that could result in decertification.

The Department will have 10 days to make the relevant report.

Although the reporting requirement does not begin until January 2023, it does apply to events that occurred before January 2023. SB 2 specifically requires agencies to report any instance of a listed event that took place between January 1, 2020, and January 1, 2023. For reports falling in that earlier time frame, the reporting deadline will be July 1, 2023.

Removal of Immunity for Civil Rights Cases

Under current law, the Tom Bane Civil Rights Act, Civil Code section 52.1, allows individuals to bring a civil claim for damages if their constitutional rights have been interfered with, or

attempted to be interfered with. However, current law also contains a number of provisions that provide public employees and government agencies with qualified immunity from liability in civil cases.

SB 2 adds a provision to the Bane Act that would eliminate certain immunity provisions. Specifically, the following immunity provisions would no longer apply to civil actions brought under the Bane Act against peace officers, custodial officers, or directly against a public agency that employs them:

- Government Code Section 821.6, which provides immunity to a public employee “for injury caused by his instituting or prosecuting any judicial or administrative proceeding within the scope of his employment, even if he acts maliciously and without probable cause.”
- Government Code Section 844.6, which provides limited immunity to public entities for injuries to, or caused by, a prisoner (subject to a variety of existing exceptions).
- Government Code Section 845.6, which provides limited immunity to public entities and public employees for injuries caused by a public employee’s failure to obtain medical care for a prisoner in their custody.

SFPD’s RESPONSIBILITIES:

Brady Unit/Internal Affairs Division – Responsible for reporting allegations of misconduct within the jurisdiction of IAD, ISD and DPA.

EEO- Responsible for reporting responsive allegations of misconduct reported to EEO.

Legal Division- Responsible for reporting civil judgments or court findings, settlements of a claim against an officer or SFPD based on responsive allegations of misconduct.

Backgrounds Unit- Responsible for implementing hiring requirements under SB2.

Staff Services- Responsible for reporting separations from employment and executing an affidavit of separation for each.



WILLIAM SCOTT

Chief of Police

Per DN 20-150, all sworn & non-sworn members shall electronically acknowledge this Department document in PowerDMS. Members whose duties are relevant to this document shall be held responsible for compliance. Any questions regarding this policy should be made to sfpd.writtendirectives@sfgov.org who will provide additional information about the directive.