

# SENATE RULES COMMITTEE

SB 2

Office of Senate Floor Analyses

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## THIRD READING

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Bill No: SB 2  
Author: Bradford (D) and Atkins (D), et al.  
Amended: 5/20/21  
Vote: 21

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SENATE PUBLIC SAFETY COMMITTEE: 4-0, 4/13/21

AYES: Bradford, Kamlager, Skinner, Wiener

NO VOTE RECORDED: Ochoa Bogh

SENATE JUDICIARY COMMITTEE: 7-2, 4/27/21

AYES: Durazo, Gonzalez, Hertzberg, Laird, Stern, Wieckowski, Wiener

NOES: Borgeas, Jones

NO VOTE RECORDED: Umberg, Caballero

SENATE APPROPRIATIONS COMMITTEE: 5-2, 5/20/21

AYES: Portantino, Bradford, Kamlager, Laird, Wieckowski

NOES: Bates, Jones

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**SUBJECT:** Peace officers: certification: civil rights

**SOURCE:** ACLU of California

Alliance for Boys and Men of Color

Anti-Police Terror Project

Black Lives Matter Los Angeles

California Families United 4 Justice

Communities United for Restorative Youth Justice

PolicyLink

STOP Coalition

UDW/AFSCME Local 3930

Youth Justice Coalition

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**DIGEST:** This bill grants 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 makes changes to the Bane Civil Rights Act to limit immunity, as specified.

**ANALYSIS:**

Existing law:

- 1) Requires minimum training and moral character requirements for peace officers, as defined, while at the same time identifying certain disqualifying factors, including a felony conviction. (Penal Code Sections 830 *et seq.* and Government Code Sections 1029 and 1031.)
- 2) 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. Authorizes POST to cancel a certificate that was awarded in error or fraudulently obtained; however, POST is prohibited from canceling a properly-issued certificate. (Penal Code Sections 830-832.10 and 13500 *et seq.*)
- 3) States that except as specified, peace officer or custodial officer personnel records and records maintained by any state or local agency pursuant to citizens' complaints against personnel are confidential and shall not be disclosed in any criminal or civil proceeding except by discovery. This section shall not apply to investigations or proceedings concerning the conduct of peace officers or custodial officers, or any agency or department that employ these officers, conducted by a grand jury, a district attorney's office, or the Attorney General's office. (Pen. Code, § 832.7, subd. (a).)
- 4) Provides, under the Tom Bane Civil Rights Act, that if a person or persons, whether or not acting under color of law, interfere or attempt to interfere, by threats, intimidation, or coercion, with the exercise or enjoyment of any rights secured by the Constitution or laws of the United States, or by the Constitution or laws of the state of California, the Attorney General, or any district attorney or city attorney, is authorized to bring a civil action for equitable relief and a civil penalty. (Civil Code Section 52.1 (b).)
- 5) Permits a person whose exercise or enjoyment of rights were interfered with in violation of the Tom Bane Civil Rights Act to institute a civil action in their own name and on their own behalf for damages, as specified. (Civil Code Section 52.1 (c).)

- 6) Provides, under the Government Claims Act, that unless a statute provides otherwise, a public entity is not liable for injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person. However, a public entity is liable for injury proximately caused by an act or omission of an employee of the public entity within the scope of their employment if the act or omission would otherwise have given rise to a cause of action against that employee. (Government Code Section 814 *et seq.*)
- 7) Provides that public employees are not liable for injury caused by their instituting or prosecuting any judicial or administrative proceeding within the scope of their employment, even if they act maliciously and without probable cause. (Government Code Section 821.6.)
- 8) Provides, subject to certain exemptions, that a public entity or public employee is not liable for an injury to a prisoner, or an injury caused by the failure of an employee, other than a healing arts employee, to furnish or obtain medical care for a prisoner in their custody. However, nothing exonerates a public employee from injury proximately caused by their negligent or wrongful act or omission. Specifies that in such case the public entity may, but is not required to, pay any judgment, compromise, or settlement, but may be required to indemnify any public employee, in any case where the entity is immune from liability. (Government Codes Sections 844.6 and 845.6.)

This bill:

- 1) Requires POST to adopt by regulation a definition of “serious misconduct” that shall serve as the criteria to be considered for ineligibility for, or revocation of, certification. The bill sets out a number of criteria that shall be included as serious misconduct.
- 2) Grants POST the power to investigate and determine the fitness of any person to serve as a peace officer in the state of California and to audit any law enforcement agency that employs peace officers without cause at any time by creating and empowering a new division.
  - a) Creates the Peace Officer Standards Accountability Division (Division) within POST to investigate and prosecute proceedings to take action against a peace officer’s certification.
  - b) Requires the Division to review and investigate grounds for decertification and make findings as to whether the grounds for action against an officer’s certification exist.

- c) Requires the Division to notify the officer subject to decertification of their findings and allow the officer to request review.
- 3) Creates the Peace Officer Standards Accountability Advisory Board (Advisory Board) and sets forth the membership qualifications and a 3-year term of service.
- 4) Requires that the Advisory Board hold public meetings to review the findings after an investigation made by the division and to make a recommendation to POST.
- 5) Requires that POST adopt the recommendation of the Advisory Board if supported by clear and convincing evidence and if action is to be taken against an officer's certification, return the determination to the Division to commence formal proceedings before an administrative law judge consistent with the Administrative Procedures Act. And provides that the determination of the administrative law judge shall be subject to judicial review. This bill also requires that POST notify the employing agency of the officer as well as the district attorney of the county in which the officer is employed of their decision.
- 6) Requires law enforcement agencies to report to POST:
  - a) The employment, appointment, or separation from employment of a peace officer;
  - b) Any complaint, charge, allegation, or investigation into the conduct of a peace officer that could render the officer subject to revocation;
  - c) Findings of civil oversight entities; and
  - d) Civil judgements that could affect the officer's certification.
- 7) Requires, in cases of separation from employment or appointment, each agency is required to execute an affidavit-of-separation form adopted by POST describing the reason for the separation. This affidavit is signed under penalty of perjury.
- 8) Declares that certificates or proof of eligibility awarded by POST to be the property of POST and would authorize POST to revoke a proof of eligibility or certificate on grounds including the use of excessive force, sexual assault, making a false arrest, or participating in a law enforcement gang.

- 9) Requires law enforcement agencies only employ peace officers with current, valid certification or pending certification.
- 10) Directs POST to issue or deny certification, including a basic certificate or proof of eligibility to a peace officer.
- 11) Requires POST to issue a proof of eligibility or basic certificate to persons employed as a peace officers on January 1, 2022, who not otherwise possess a certificate.
- 12) Requires renewal of proof of eligibility or basic certification at least every two years and requires that POST assess a fee for the application, renewal, and the annual certification fee.
- 13) Creates a Peace Officer Certification Fund for the fees to be deposited into and continuously appropriate those funds to POST for the administration and certification program.
- 14) Makes all records related to the revocation of a peace officer's certification public and would require that records of an investigation be retained for 30 years.
- 15) Eliminates specified immunity provisions for peace and custodial officers, or public entities employing peace or custodial officers sued under the Tom Bane Civil Rights Act.
- 16) Authorizes persons who can otherwise bring actions for wrongful death to bring an action under the Tom Bane Civil Rights Act for the death of a person if the when the claim is based on conduct that constitutes a crime of violence or a crime of moral turpitude.
- 17) Makes a number of uncodified findings and declarations.

## **Background**

This bill creates a process for decertification by creating the Peace Officer Standards Accountability Division (Division) within POST. This Division has the responsibility of reviewing grounds for decertification, conducting investigations into serious misconduct, presenting findings in decertification procedures, and seeking revocation of certification of peace officers. The bill also creates a Peace Officer Standards Accountability Advisory Board (Advisory Board). The Advisory Board is tasked with hearing evidence of misconduct and making determinations as to the certification or decertification of peace officers. The

Advisory Board conducts hearings publically and the bill makes the necessary amendments to California code to permit the discussion of peace officer personnel records introduced in these proceedings subject to public disclosure.

California's Bane Act protects persons from threats, intimidation, or coercion and for attempts to interfere with someone's state or federal statutory constitutional rights. The Bane Act authorizes a cause of action against a person who, whether or not acting under "color of law," uses threats, intimidation, or coercion to interfere with the ability of another person in the exercise and enjoyment of any rights guaranteed under the U.S. or California constitutions, or any right guaranteed under federal or state statute. Some courts have more restrictively interpreted the Bane Act to require that threats, intimidation, or coercion must be committed with the specific intent to interfere with the person's rights. Other courts have found that only general intent is required.

**FISCAL EFFECT:** Appropriation: Yes Fiscal Com.: Yes Local: Yes

According to the Senate Appropriations Committee:

- *Commission on Peace Officer Standards and Training (POST):* The commission reports one-time costs of \$650,000 and ongoing costs ranging between \$28.3 million and \$37.2 million annually. In large part, costs are associated with increased personnel required for investigations, complaint intake, data collection, information reporting, certification processing, and administrative functions (ranging from \$19 million to \$26 million annually); facility expansion of its current location and obtaining additional office space in the Bay Area and southern California (estimated at about \$5.75 million annually); travel requirements for staff (estimated between \$3 million and \$5 million annually); equipment costs (at about \$350,000 annually); and costs related to the Advisory Board (of about \$145,000 annually). Personnel estimates by POST are based on the Division conducting 1,200 decertification investigations a year, and costs likely would rise if markedly more investigations are required.

Ongoing costs, either wholly or to a large extent, would be offset by fees that POST would be able to charge to administer the mandates in this bill. For example, presuming about 100,000 peace officers in the state would be subject to the certification scheme that would be established by SB 2, the annual certification fee alone, set at the statutory cap of \$250, would generate about \$25 million. While the payment of fees ultimately would be the responsibility of each peace officer, as a practical matter, they likely would be covered by their employing agency. Consequently, the fees likely would be added state

costs for state entities that employ peace officers who would be subject to the certification requirement of this bill. While POST would be able to charge fees for certifications that it issues starting on January 1, 2022, it is likely that the commission would, at least initially, need to use its existing operating budget or receive a General Fund appropriation to begin its work under this measure before it is able to collect fee revenue. (General Fund, fees)

- *California Highway Patrol (CHP)*: To the extent that CHP covers the costs of the certification fees for its peace officers, it anticipates initial costs of \$4.18 million with ongoing annual costs of \$2.09 million. The department also reports the likely need to hire 2.0 additional Attorney VI and 2.0 Senior Legal Analysts, at an annual ongoing cost of \$600,000 (exclusive of benefits), for workload related to the elimination of qualified immunity under the Bane Act. (Special fund\*)
- *Department of Corrections and Rehabilitation (CDCR)*: Significant ongoing annual workload costs, necessitating new personnel, ranging from the hundreds of thousands of dollars to the millions of dollars to CDCR to report to POST within seven days the occurrence of specified incidents that could lead to the revocation of an officer's certification, including any complaint, charge, allegation, or investigation into the conduct of a peace officer that could render the certification of the officer subject to revocation. The department employs over 28,000 peace officers and receives a significant number of complaints against its officers every week. Additionally, CDCR is not equipped to provide an outside agency with all of the complaints that it receives. Doing so likely would require significant one-time infrastructure costs to establish such a process. (General Fund)
- *Department of Justice (DOJ)*: Unknown, potentially-significant workload costs. For a similar bill from a prior session, costs for the department were in the low hundreds of thousands of dollars annually with higher initial costs during the first few years. Any litigation costs borne by DOJ related to the representation of a state agency due to the elimination of immunity under the Bane Act would be recoverable through charges to the client state departments. Collectively, however, these litigation cost could be significant, potentially in the hundreds of thousands of dollars annually.
- *Other state entities*: Costs would vary, from minor and absorbable (for those agencies that employ a small number of peace officers) to tens of thousands of dollars each year (e.g., the Department of Insurance) to the low hundreds of

thousands of dollars annually (e.g., the University of California with approximately 470 peace officers).

- *Loss of immunity, lower standard:* Unknown, potentially major costs in the millions of dollars annually across state departments to the extent that the elimination of immunity for state employers in the Bane Act would lead to additional and/or higher awards of damages and settlements by state departments and entities that employ peace officers or custodial officers than otherwise would happen under existing law.
- *Information reporting by local agencies:* Unknown, potentially-major costs in the aggregate to local jurisdictions to provide specified information to POST under SB 2. Actual costs to each jurisdiction would depend on a number of factors, including the number of peace officers employed by the agency, the rate of officer turnover, and how many officers are subject to an investigation that would prompt reporting by this measure. These costs likely would be reimbursable by the state, the extent of which would be determined by the Commission on State Mandates. Considering that there are over 500 local law enforcement agencies across the state, costs to comply with this measure could be in the hundreds of thousands of dollars in the aggregate at a minimum. (General Fund, local funds)
- *Courts:* Unknown, potentially-significant workload cost pressures to the courts to the extent that the ability to bring wrongful death claims and/or the inapplicability of specified immunity provisions under the Bane Act result in additional or lengthier cases that would not have been file or taken as long under existing law. While the superior courts are not funded on a workload basis, an increase in workload could result in delayed court services and would put pressure on the General Fund to increase the amount appropriated to backfill for trial court operations. For illustrative purposes, the Governor's proposed 2021-2022 budget would appropriate \$118.3 million from the General Fund to backfill continued reduction in fine and fee revenue for trial court operations. (General Fund\*\*)

\* Motor Vehicle Account, State Transportation Fund

\*\* Trial Court Trust Fund

**SUPPORT:** (Verified 5/20/21)

ACLU of California (co-source)

Alliance for Boys and Men of Color (co-source)

Anti-Police Terror Project (co-source)

Black Lives Matter Los Angeles (co-source)  
California Families United 4 Justice (co-source)  
Communities United for Restorative Youth Justice (co-source)  
PolicyLink (co-source)  
STOP Coalition (co-source)  
UDW/AFSCME Local 3930 (co-source)  
Youth Justice Coalition (co-source)  
Against Bigotry, Responding With Action  
Alameda County Public Defender's Office  
All Home  
Alliance San Diego  
American Association of Independent Music  
American Civil Liberties Union/Northern California/Southern California/San  
Diego and Imperial Counties  
American Federation of State, County and Municipal Employees, Local 3299  
Artist Rights Alliance  
Asian Prisoner Support Committee  
Asian Solidarity Collective  
Bend the Arc: Jewish Action  
Black Leadership Council  
Black Music Action Coalition  
Brotherhood Crusade  
California Alliance for Youth and Community Justice  
California Department of Insurance  
California Faculty Association  
California Immigrant Policy Center  
California Innocence Coalition: Northern California Innocence Project, California  
Innocence Project, Loyola Project for The Innocent  
California Nurses Association  
California Public Defenders Association  
Californians for Safety and Justice  
Change for Justice  
Children's Defense Fund - California  
City of Oakland  
Clergy and Laity United for Economic Justice  
Community Advocates for Just and Moral Governance  
Consumer Attorneys of California  
Courage California  
Democratic Party of The San Fernando Valley  
Disability Rights California

Drug Policy Alliance  
East Bay for Everyone  
Ella Baker Center for Human Rights  
Empowering Pacific Islander Communities  
Equal Rights Advocates  
Essie Justice Group  
Everytown for Gun Safety Action Fund  
Fresno Barrios Unidos  
Friends Committee on Legislation of California  
Fund Her  
Giffords  
Indivisible CA Statestrong  
Indivisible East Bay  
Indivisible South Bay LA  
Indivisible Yolo  
Initiate Justice  
Justice Reinvestment Coalition of Alameda County  
Kensington Community Church  
Kern County Participatory Defense  
LA Voice  
Law Enforcement Accountability Network  
Law Enforcement Action Partnership  
League of Women Voters of California  
Legal Services for Prisoners With Children  
Los Angeles LGBT Center  
Martin Luther King Jr Freedom Center  
Mexican American Bar Association of Los Angeles County  
Mid-city Community Advocacy Network  
Moms Demand Action for Gun Sense in America  
Mosques Against Trafficking  
Music Artists Coalition  
National Action Network - Sacramento Chapter  
National Association of Social Workers, California Chapter  
National Institute for Criminal Justice Reform  
National Nurses United  
Nextgen California  
Orange County Emergency Response Coalition  
Organizers in Solidarity  
Pacifica Social Justice  
Palomar Uu Fellowship

People's Budget Orange County  
Pico California  
Pillars of The Community  
Prosecutors Alliance of California  
Public Health Institute  
Recording Industry Association of America  
Roots of Change  
Salesforce  
San Diegans for Justice  
San Francisco Bay Area Rapid Transit District  
San Francisco Board of Supervisors  
San Francisco Public Defender  
San Jose State University Human Rights Institute  
Santa Monica Coalition for Police Reform  
Screen Actors Guild-American Federation of Television and Radio Artists  
SEIU California  
Showing Up for Racial Justice Long Beach  
Showing Up for Racial Justice North County  
Showing Up for Racial Justice North County San Diego  
Showing Up for Racial Justice San Diego  
Silicon Valley Leadership Group  
Songwriters of North America  
Southeast Asia Resource Action Center  
Students Demand Action for Gun Sense in America  
Team Justice  
The Resistance Northridge Indivisible  
Think Dignity  
Together We Will/indivisible - Los Gatos  
Uprise Theatre  
We the People - San Diego  
White People 4 Black Lives  
Yalla Indivisible

**OPPOSITION:** (Verified 5/20/21)

Association for Los Angeles Deputy Sheriffs  
Association of Orange County Deputy Sheriff's  
Association of Probation Supervisors of Los Angeles County  
California Association of Highway Patrolmen  
California Association of Joint Powers Authorities  
California Coalition of School Safety Professionals

California Correctional Peace Officers Association  
California Fraternal Order of Police  
California Peace Officers Association  
California Police Chiefs Association  
California State Sheriffs' Association  
California Statewide Law Enforcement Association  
City of Fountain Valley  
City of Kerman  
Corona Police Officers Association  
Deputy Sheriffs Association of San Diego  
Hawthorne Police Officers Association  
League of California Cities  
Long Beach Police Officers Association  
Los Angeles County Probation Managers Association, AFSCME, Local 1967  
Los Angeles Police Protective League  
Los Angeles School Police Officers Association  
Newport Beach Police Association  
Pacific Justice Institute  
Palos Verdes Police Officers Association  
Peace Officers Research Association of California  
Riverside Sheriffs' Association  
Sacramento County Deputy Sheriffs Association  
San Bernardino County Safety Employees' Benefit Association  
San Bernardino County Sheriff's Employees' Benefit Association  
San Diego District Attorney Investigator's Association  
San Diego Police Officers Association  
San Francisco Police Officers Association  
Santa Ana Police Officers Association

Prepared by: Gabe Caswell / PUB. S. /  
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