

IV. Accountability and Complaints

A. Introduction

B. SB 2 and Decertification

1. SB 2 Overview

Senate Bill No. 2 (2021-2022 Reg. Sess.) (SB 2), the Kenneth Ross, Jr. Police Decertification Act of 2021, was signed into law on September 30, 2021.¹ SB 2 establishes a statewide system for suspension or revocation of a peace officer's certification due to serious misconduct. The Commission on Peace Officer Standards and Training (POST) plays a pivotal role in this system. POST is statutorily mandated to set minimum standards for the recruitment and training of peace officers, develops peace officer training courses and curriculum, and issues professional certificates to peace officers to foster education, training, and professionalism in law enforcement; raise the level of competence of law enforcement officers; and foster cooperation between POST, its clients, and individuals.²

Before SB 2, POST could cancel a peace officer's certificate that was awarded in error or obtained through misrepresentation or fraud but was otherwise prohibited from canceling a certificate that had been properly issued. POST also did not maintain any disciplinary records for California peace officers.³ POST now has authority to review and investigate reports of serious misconduct by peace officers and suspend or revoke the certification of peace officers POST determined had engaged in serious misconduct.⁴

POST is responsible for promulgating regulations that outline the procedural aspects of the certification and decertification process under SB 2.⁵ Regulations POST promulgated to implement SB 2 define what constitutes serious misconduct.⁶ POST is also required to revoke the certification of a peace officer who has become ineligible to hold office as a peace officer because of a criminal conviction listed in Government Code section 1029.⁷ Under SB 2, POST has the power to investigate and determine the fitness of any person to serve as a peace officer in the state.⁸

¹ Stats. 2021, c. 409 (S.B.2) eff. Jan. 1, 2022.

² POST, Peace Officer Certification, <<https://post.ca.gov/Certification>> [as of XX, 2024].

³ POST, Peace Officer Certification, <<https://post.ca.gov/Certification>> [as of XX, 2024].

⁴ Pen. Code, § 13510.8, subd. (a), (c).

⁵ See Cal. Code Regs. tit. 11, §1201 et seq.

⁶ Cal. Code Regs., tit. 11, § 1205.

⁷ See Pen. Code, § 13510.8; Cal. Code Regs., tit. 11, § 1212, subd. (a); see also POST, *Penal Code § 13512 Annual Report 2023*, at p. 4 <https://post.ca.gov/Portals/0/post_docs/publications/2023_POSAD_Report.pdf> [as of XX, 2024].

⁸ Pen. Code, § 13503, subd. (f).

DRAFT REPORT – PENDING EDITING AND REVIEW

This draft is a product of various subcommittees of the Racial and Identity Profiling Advisory Board. It has been provided merely for the Racial and Identity Profiling Advisory Board's consideration and its content does not necessarily reflect the views of any individual RIPA Board member, the full RIPA Board, or the California Department of Justice.

SB 2 also imposes duties on law enforcement agencies. Law enforcement agencies can only employ individuals with a current, valid certification as peace officers.⁹ The only exception is that an agency may provisionally employ a person for up to 24 months, pending their certification by POST, provided the person has received a proof of eligibility and has not previously been certified or denied certification or had their certification revoked.¹⁰ Agencies are required to report the employment, appointment, or termination or separation from employment or appointment of any peace officer to POST within 10 days.¹¹ Separation from employment or appointment includes an involuntary termination, resignation, or retirement.¹² They are also required to report serious misconduct by a peace officer to POST within 10 days of receiving the allegation.¹³

Members of the public can also submit complaints about peace officers to POST.¹⁴ POST sends any complaints received from the public to the agency employing the peace officer to conduct an internal investigation.¹⁵ POST also has the authority to initiate investigations if made aware of serious misconduct by a peace officer through other means, such as the media.¹⁶ According to POST's 2023 annual report, POST has received more than 22,000 reports of allegations of serious misconduct from law enforcement agencies, as well as complaints from the public.¹⁷

SB 2 also establishes a process for determining whether an action should be taken against a peace officer's certification.¹⁸

Finally, SB 2 imposes obligations on the California Department of Justice (Cal DOJ), requiring it to provide POST with necessary disqualifying felony and misdemeanor conviction data for all persons known to be current or former peace officers.¹⁹ POST is permitted to use this information for decertification purposes.²⁰

⁹ Pen. Code, § 13510.1, subd. (g).

¹⁰ Pen. Code, § 13510.1, subd. (g). The certification requirement applies to peace officers described in Penal Code sections 830.1, 830.2 with the exception of those described in subdivision (d) of that section, 830.3, 830.32, or 380.33, or any other peace officer employed by an agency that participates in the POST program. Peace officer identified in these sections must possess either a valid Proof of Eligibility or a Basic Certificate. (Pen. Code, § 13510.1, subd. (a).)

¹¹ Pen. Code, § 13510.9, subd. (a)(1).

¹² Pen. Code, § 13510.9, subd. (a)(1).

¹³ Pen. Code, § 13510.9.

¹⁴ Cal. Code Regs., tit. 11, § 1206, subd. (b); POST, Public Complaints, <<https://post.ca.gov/public-complaints>> [as of XX, 2024].

¹⁵ POST, Public Complaints, <https://post.ca.gov/public-complaints> [as of XX, 2024].

¹⁶ POST, *Penal Code § 13512 Annual Report 2023*, at p. 4 <https://post.ca.gov/Portals/0/post_docs/publications/2023_POSAD_Report.pdf> [as of XX, 2024].

¹⁷ POST, *Penal Code § 13512 Annual Report 2023*, at p. 4 <https://post.ca.gov/Portals/0/post_docs/publications/2023_POSAD_Report.pdf> [as of XX, 2024].

¹⁸ Pen. Code, § 13510.8.

¹⁹ Gov. Code, § 1029, subd. (f).

²⁰ Gov. Code, § 1029, subd. (f).

DRAFT REPORT – PENDING EDITING AND REVIEW

This draft is a product of various subcommittees of the Racial and Identity Profiling Advisory Board. It has been provided merely for the Racial and Identity Profiling Advisory Board's consideration and its content does not necessarily reflect the views of any individual RIPA Board member, the full RIPA Board, or the California Department of Justice.

As part of the decertification process, SB 2 created two new entities. One is the Peace Officer Standards Accountability Division (POSAD), which is the investigative entity within POST that makes findings on whether grounds to decertify or suspend a peace officer exist.²¹ The second one is the Peace Officer Standards Accountability Advisory Board (Accountability Board), a separate entity lead by civilians, which makes recommendations to POST about whether to decertify or suspend a peace officer based on POSAD's findings.²²

a. Peace Officer Standards Accountability Division

POSAD is comprised of six bureaus: four Professional Conduct Bureaus, a Certification Bureau, and an Intake/Disposition Bureau. The Professional Conduct Bureaus conduct the decertification investigations.²³ As part of their process, the Bureaus review investigations of peace officers conducted by law enforcement agencies, and when necessary, conduct further investigation into serious misconduct that may provide grounds for suspension or revocation of a peace officer's certification.

At the conclusion of its investigation, POSAD is required to make findings as to whether grounds for action against a peace officer's certification exist.²⁴ POSAD notifies the peace officer subject to decertification of their findings.²⁵ POSAD reports the findings of its investigations to the Accountability Board and to POST.²⁶ The officer has 30 days to request review from the Accountability Board.²⁷

b. Peace Officer Standards Accountability Board

The Accountability Board is a civilian-led advisory board consisting of nine members appointed by the Governor and California Legislature.²⁸ The purpose of the Accountability Board is to make recommendations on the decertification of peace officers to POST.²⁹

The Board must include:

²¹ Pen. Code, § 13509.5.

²² Pen. Code, § 13509.6; see also POST, Peace Officer Standards Accountability Advisory Board, <<https://post.ca.gov/Peace-Officer-Standards-Accountability-Advisory-Board>> [as of XX, 2024].

²³ See SB 2 Informational Video, <https://www.youtube.com/playlist?list=PLVY-7Z6jpM2hhwTtiNc7x00O_COSFsGw> (as of May 6, 2024); see also POST, *Penal Code § 13512 Annual Report 2023*, at p. 8 <https://post.ca.gov/Portals/0/post_docs/publications/2023_POSAD_Report.pdf> [as of XX, 2024].

²⁴ See Pen. Code, § 13509.5, subd. (b).

²⁵ Pen. Code, § 13510.85, subd. (a)(1).

²⁶ Pen. Code, § 13509, subd. (b).

²⁷ Pen. Code, § 13510.85, subd. (a)(2).

²⁸ Pen. Code, § 13509, subd. (d).

²⁹ Pen. Code, § 13509.6, subd. (b).

DRAFT REPORT – PENDING EDITING AND REVIEW

This draft is a product of various subcommittees of the Racial and Identity Profiling Advisory Board. It has been provided merely for the Racial and Identity Profiling Advisory Board's consideration and its content does not necessarily reflect the views of any individual RIPA Board member, the full RIPA Board, or the California Department of Justice.

- (1) One member who is a current or former peace officer with substantial experience at a command rank, appointed by the Governor.
- (2) One member who is a current or former peace officer with substantial experience at a management rank in internal investigations.
- (3) Two members who are members of the public, who are not former peace officers, and who have substantial experience working at nonprofit or academic institutions on issues related to police accountability. One of these members must be appointed by the Governor and one by the Speaker of the Assembly.
- (4) Two members who are members of the public, who are not former peace officers, and who have substantial experience working at community-based organizations on issue related to police accountability. One of these members must be appointed by the Governor and one by the Senate Rules Committee.
- (5) Two members who are members of the public, and who are not former peace officers, with strong consideration given to individuals who have been subject to wrongful use of force likely to cause death or serious bodily injury by a peace officer, or who are surviving family members of a person killed by the wrongful use of deadly force by a peace officer, appointed by the Governor.
- (6) One member who is an attorney, and who is not a former peace officer, with substantial professional experience involving oversight of peace officers, appointed by the Governor.³⁰

Each member of the Accountability Board is appointed for a term of three years and holds office until the appointment of the member's successor or until one year has elapsed since the expiration of the term for which the member was appointed, whichever occurs first. Vacancies are filled by appointment for the unexpired term of a person with the same qualification for appointment as the person being replaced. No person may serve more than two terms consecutively. The Governor must remove from the Accountability Board any peace officer member whose certification as a peace officer has been revoked, and may, after hearing, remove any member of the Accountability Board for neglect of duty or other just cause.³¹ All members of the Accountability Board must complete a 40-hour decertification training course, as developed by POST on the decertification process, internal investigation, evidentiary standards, use of force standards and training, and local disciplinary process.³²

The Accountability Board is required to hold public meetings to review the findings of the serious misconduct investigations conducted by POSAD and to make recommendations to POST whether to take action against a peace officer's certification. The Board is also required to report

³⁰ Pen. Code, § 13509.6, subd. (d)(1) - (6). The list and biographies of current Accountability Board members can be found on POST's website at <https://post.ca.gov/Peace-Officer-Standards-Accountability-Advisory-Board>.

³¹ Pen. Code, § 13509.6, subd. (e).

³² Pen. Code, § 13509.6, subd. (i).

DRAFT REPORT – PENDING EDITING AND REVIEW

This draft is a product of various subcommittees of the Racial and Identity Profiling Advisory Board. It has been provided merely for the Racial and Identity Profiling Advisory Board's consideration and its content does not necessarily reflect the views of any individual RIPA Board member, the full RIPA Board, or the California Department of Justice.

annually on the activities of POSAD, the Accountability Board, and POST, relating to the certification program, including the number of applications for certification, the events reported, the number of investigations conducted, and the number of certificates surrendered or revoked.³³ The first report was published in 2024 and is available in POST's Data Warehouse.³⁴

2. Grounds for Decertification

A peace officer will have their certification revoked if the officer has become ineligible to hold office as a peace officer under Government Code section 1029.³⁵ A peace officer may have their certification suspended or revoked if the officer has been terminated for cause from employment as a peace officer or has otherwise engaged in serious misconduct, as described and defined in Penal Code section 13510.8, subdivision (b) and POST regulations.³⁶

a. Government Code Section 1029

Under Government Code section 1029, a person 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 if, among other things, the person:

- 1) Has specified criminal convictions or adjudications,
- 2) Had their certification revoked by POST,
- 3) Has voluntarily surrendered their certification pursuant to California Penal Code 13510.8, subdivision (f),
- 4) Has met the minimum requirement for issuance of certification but has been denied issuance of certification, or
- 5) Has been previously employed in law enforcement in any state or United States territory or by the federal government, whose name is listed in the National Decertification Index of the International Association of Directors of Law Enforcement Standards and Training or any other database designated by the federal government.³⁷

As of March 14, 2024, POST has decertified 199 officers. Sixty-seven of those decertifications were based on Government Code section 1029. Fifty-six were made ineligible through section

³³ Pen. Code, § 13512, subd. (b)(1) - (10).

³⁴ POST, *Penal Code § 13512 Annual Report 2023*,

https://post.ca.gov/Portals/0/post_docs/publications/2023_POSAD_Report.pdf [as of XX, 2024]; POST, Decertification: Annual Report, <https://post.ca.gov/Decertification> [as of XX, 2024].

³⁵ Pen. Code, § 13510.8, subd. (a)(1).

³⁶ Pen. Code, § 13510.8, subd. (a)(2).

³⁷ Gov. Code, § 1029.

DRAFT REPORT – PENDING EDITING AND REVIEW

This draft is a product of various subcommittees of the Racial and Identity Profiling Advisory Board. It has been provided merely for the Racial and Identity Profiling Advisory Board's consideration and its content does not necessarily reflect the views of any individual RIPA Board member, the full RIPA Board, or the California Department of Justice.

1029, and eleven certifications were revoked following a felony conviction after January 1, 2022.³⁸

b. Serious Misconduct

POST may also suspend or revoke the certification of a peace officer if the person has been terminated for cause from employment as a peace officer or POST has determined that the person has engaged in serious misconduct while employed as a peace officer. “Serious misconduct” is defined as:

- (1) 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.³⁹
- (2) Abuse of power.⁴⁰
- (3) Physical abuse.⁴¹
- (4) Sexual assault.⁴²
- (5) Demonstrating bias on the basis of actual or perceived race, national origin, religion, gender identity or expression, housing status, sexual orientation, mental or physical disability, or other protected status in violation of law or department policy or inconsistent with a peace officer’s obligation to carry out their duties in a fair and unbiased manner.⁴³
- (6) 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.
- (7) Participation in a law enforcement gang.
- (8) Failure to cooperate with an investigation into potential police misconduct.
- (9) 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

³⁸ POST, Peace Officer Certification Actions, <<https://post.ca.gov/Peace-Officer-Certification-Actions>> [as of XX, 2024].

³⁹ This includes but not limited to, making false statements, intentionally filing false reports, tampering with, falsifying, destroying, or concealing evidence, perjury, and tampering with data. POST, Peace Officer Certification Actions, <<https://post.ca.gov/Peace-Officer-Certification-Actions>> [as of XX, 2024].

⁴⁰ Including, but not limited to, intimidating witnesses, knowingly obtaining a false confession, and knowingly making a false arrest.

⁴¹ Physical abuse includes, but is not limited to, the excessive or unreasonable use of force.

⁴² As described in subdivision (b) of Penal Code 832.7, and shall extend to acts committed amongst member of any law enforcement agency.

⁴³ In December 2023, POST published notice of a proposed amendment to POST Regulation 1205 that would expand the definition of “demonstrating bias” to clarify what POST considers a demonstration of bias. See Notice of Proposed Regulatory Action – Amend Commission Regulation 1205 – Definitions Related to Serious Misconduct, No. 2-23-70, https://post.ca.gov/Portals/0/post_docs/bulletin/2023-70.pdf; Text of Proposed Regulatory Action: Amend Commission Regulation 1205, https://post.ca.gov/Portals/0/post_docs/regulationnotices/2023/2023-70_TPR_Reg1205.pdf.

DRAFT REPORT – PENDING EDITING AND REVIEW

This draft is a product of various subcommittees of the Racial and Identity Profiling Advisory Board. It has been provided merely for the Racial and Identity Profiling Advisory Board’s consideration and its content does not necessarily reflect the views of any individual RIPA Board member, the full RIPA Board, or the California Department of Justice.

the circumstances, taking into account the possibility that other officers may have additional information regarding the threat posed by a subject.

Demonstrating bias is applicable to RIPA’s goal of eliminating racial and identity profiling. An officer is “demonstrating” bias when the officer either shows or displays, by words, actions or other conduct, prejudice, intolerance, contempt, or hatred towards one or more persons due to that person’s membership within a class of persons identified in Penal Code section 13510.8, subdivision (b)(5), when such words, actions, or other conduct would lead a reasonable person to conclude that the officer has not fairly and impartially performed, or will not fairly and impartially perform, their law enforcement duties.⁴⁴

According to POST’s online listing of certification actions, the most common ground for decertification related to serious misconduct is egregious or repeated acts that violate the law, followed by physical abuse or excessive force, sexual assault, dishonesty, demonstrating bias, abuse of power, and failure to cooperate.⁴⁵ As of March 14, 2024, there have been no SB 2 misconduct certification actions relating to participation in a law enforcement gang, or for failure to intercede when present and observing force that is clearly unnecessary.⁴⁶ This stands in contrast to the allegations POST receives relating to serious misconduct, where 9,809 allegations of physical abuse or excessive force and 6,686 allegations of bias make up a majority of allegations.⁴⁷

Basis	Allegations Received		Certification Actions	
	Number	Percent	Number	Percent
Physical Abuse/Excessive Force	9808	40.20%	28	21.21%
Demonstrating Bias	6686	27.40%	7	5.30%
Abuse of Power	2893	11.86%	4	3.03%
Dishonesty	1931	7.91%	9	6.82%
Acts that Violate the Law	1672	6.85%	66	50.00%
Sexual Assault	1029	4.22%	12	9.09%
Other Serious Misconduct	381	1.56%	6	4.55%

⁴⁴ Cal Code Regs., tit. 11, § 1205, subd. (a)(5)(A).

⁴⁵ See POST, *Peace Officer Certification Actions*, <<https://post.ca.gov/Peace-Officer-Certification-Actions>> [as of XX, 2024].

⁴⁶ POST, *Peace Officer Certification Actions*, <<https://post.ca.gov/Peace-Officer-Certification-Actions>> [as of XX, 2024].

⁴⁷ POST, *Penal Code § 13512 Annual Report 2023*, p. 11, <https://post.ca.gov/Portals/0/post_docs/publications/2023_POSAD_Report.pdf> [as of XX, 2024].

DRAFT REPORT – PENDING EDITING AND REVIEW

This draft is a product of various subcommittees of the Racial and Identity Profiling Advisory Board. It has been provided merely for the Racial and Identity Profiling Advisory Board’s consideration and its content does not necessarily reflect the views of any individual RIPA Board member, the full RIPA Board, or the California Department of Justice.

3. Initiating the SB 2 Decertification Process

a. Reporting and Agency Investigation of Serious Misconduct

Serious misconduct by a peace officer can be reported to POST through a variety of means, including mandatory reporting by law enforcement agencies and by complaints from the public.

i. Reporting by Law Enforcement Agencies

Each law enforcement agency is required to investigate internally any allegations of serious misconduct by a peace officer, regardless of the officer's employment status.⁴⁸ Any agency employing peace officers must also report any serious misconduct allegations and findings of internal investigations of serious misconduct to POST within 10 days of receiving the allegation and within 10 days of the final dispositions of any investigation that determines a peace officer engaged in conduct that could render the officer subject to suspension or revocation.⁴⁹ Any allegations of serious misconduct have to be reported by the agency to POST for review, regardless of the investigative outcome.⁵⁰ This means law enforcement agencies have to submit exonerated, sustained, not sustained, and unfounded cases to POST for review as an oversight to the agency investigation. POSAD investigators look at how thorough the investigation was and determine if the officer committed serious misconduct. The agency must make available for inspection or duplication by POST any investigation into any complaint, charges, or allegations of serious misconduct by a peace officer reported to POST, including any physical or documentary evidence, witness statements, analysis, and conclusions.⁵¹

ii. Public Complaints

Members of the public may also submit complaints against peace officers directly to POST. POST accepts complaints from members of the public against California peace officers appointed pursuant to Penal Code Section 830.1, 830.2 (with the exception of subdivision (d)), 830.3, 830.32, or 830.33.⁵² Complaints may be submitted online using POST's Public Complaint

⁴⁸ Pen. Code, § 13510.8, subd. (c)(1).

⁴⁹ Pen. Code, § 13510.9; Cal. Code Regs. tit. 11, §1207; see also POST, Senate Bill No. 2 – Frequently Asked Questions, <<https://post.ca.gov/SB-2-FAQs>> [as of XX, 2024].

⁵⁰ See SB 2 Informational Video, Session #3 <https://www.youtube.com/watch?v=H2hNCB5AI74&list=PLVY_-7Z6jpM2hhwTtiNc7x00O_COSFsGw&index=3> [as of XX, 2024].

⁵¹ Pen. Code, § 13510.9, subd. (c).

⁵² See POST, Public Complaints, <<https://post.ca.gov/public-complaints>> [as of XX, 2024]; see also Pen. Code § 13510.1, subd. (a).

DRAFT REPORT – PENDING EDITING AND REVIEW

This draft is a product of various subcommittees of the Racial and Identity Profiling Advisory Board. It has been provided merely for the Racial and Identity Profiling Advisory Board's consideration and its content does not necessarily reflect the views of any individual RIPA Board member, the full RIPA Board, or the California Department of Justice.

Form,⁵³ by email or mail, by phone, or in person at POST headquarters.⁵⁴ Complaints may also be submitted anonymously.⁵⁵

Any allegations of serious misconduct received directly by POST from the public are referred to the peace officer's employing agency for investigation. The agency will then forward any findings from the agency's investigation to POST for review.⁵⁶ POST will review the agency's findings to determine if the officer's conduct warrants decertification.

POST can only conduct investigations into allegations of serious misconduct that could lead to decertification of a California peace officer. POST does not have the authority to conduct criminal or administrative investigations, which may lead to agency discipline.⁵⁷ Allegations that a California peace officer has committed a crime, which are not resolved by the local law enforcement agency, should be reported to the district attorney in the county where the law enforcement agency is located or to the Cal DOJ.⁵⁸

4. Immediate Temporary Suspensions

Penal Code section 13510.8, subdivision (d) requires the executive director of POST to immediately suspend the certificate or proof of eligibility held by a peace officer when the executive director determines that the temporary suspension is in the best interest of the health, safety, or welfare of the public and any of the following occurs:

- (1) A peace officer is arrested or indicted for any crime described in Government Code section 1029; or
- (2) A peace officer is discharged from any law enforcement agency for grounds set forth in Penal Code section 13510.8, subsection (a)⁵⁹, or
- (3) A peace officer has separated from employment as a peace officer during a pending investigation into allegations of serious misconduct.⁶⁰

⁵³ POST, Public Complaint Form, <<https://post.ca.gov/public-complaint-form>> [as of XX, 2024].

⁵⁴ Cal. Code Regs. tit. 11, § 1206.

⁵⁵ See POST Complaint Form, <https://post.ca.gov/public-complaint-form> [as of XX, 2024].

⁵⁶ POST, Senate Bill No. 2 – Frequently Asked Questions, <<https://post.ca.gov/SB-2-FAQs>> [as of XX, 2024].

⁵⁷ POST, Public Complaints, <<https://post.ca.gov/public-complaints>> [as of XX, 2024].

⁵⁸ POST, Public Complaints, <<https://post.ca.gov/public-complaints>> [as of XX, 2024].

⁵⁹ Under Penal Code section 13510.8, subsection (a), a peace officer's certification may be revoked if the person has become ineligible to hold office as a peace officer pursuant to Government Code section 1029; a peace officer's certification may be suspended or revoked if the officer has been terminated for cause from employment as a peace officer or has otherwise engaged in serious misconduct; and a peace officer's certificate or proof of eligibility may be canceled if POST determines that there was fraud or misrepresentation made by an application during the application process that resulted in a certificate being issued.

⁶⁰ Pen. Code, § 13510.8, subd. (d); see also POST, *Information and Options for the Peace Officer: The Immediate Temporary Suspension (ITS) Process*, <https://post.ca.gov/portals/0/post_docs/resources/sb2/Immediate_Temporary_Suspension.pdf> [as of XX, 2024].

DRAFT REPORT – PENDING EDITING AND REVIEW

This draft is a product of various subcommittees of the Racial and Identity Profiling Advisory Board. It has been provided merely for the Racial and Identity Profiling Advisory Board's consideration and its content does not necessarily reflect the views of any individual RIPA Board member, the full RIPA Board, or the California Department of Justice.

The temporary suspension remains in effect until POST issues its final decision or until the executive director withdraws the order.⁶¹ An individual may not exercise the powers of a peace officer during any period during which their certification is temporarily suspended.⁶²

Following an Order of Immediate Temporary Suspension, POSAD must notify the involved peace officer and agency head in writing and specify the basis for the executive director's determination.⁶³ The notice must also advise the peace officer that they have the right to respond to the executive director in writing within 14 calendar days if the officer believes that the immediate suspension order should be withdrawn.⁶⁴ Upon the receipt of a response, the executive director will consider the facts, evidence and argument in the response, and must withdraw the immediate temporary suspension if it is determined that continuing the suspension is no longer in the best interest of the health, safety, or welfare of the public.⁶⁵ If the executive director does not issue an order of withdrawal within 15 calendar days of the date of service of the officer's response, the response will be deemed denied.⁶⁶

5. POSAD Review and Investigation

Once POST receives the results of the law enforcement agency's internal investigation of serious misconduct, POSAD must promptly review any grounds for decertification received from the agency.⁶⁷ POSAD has the authority to review any agency or other investigative authority file, as well as conduct further investigation as needed to determine whether serious misconduct has occurred. POSAD only has authority to review and investigate allegations for purposes of decertification. POSAD is required to complete the investigation within three years after the receipt of the completed report of the disciplinary or internal affairs investigation from the employing agency.⁶⁸ No time limit applies, however, if a report of the conduct was not made to POST.

During its investigation, POST must consider the peace officer's prior conduct and service record, and any instances of misconduct, including any incidents occurring beyond the time

⁶¹ Pen. Code, § 13510.8, subd. (d).

⁶² POST, *Information and Options for the Peace Officer: The Immediate Temporary Suspension (ITS) Process*, <https://post.ca.gov/portals/0/post_docs/resources/sb2/Immediate_Temporary_Suspension.pdf> [as of XX, 2024].

⁶³ Cal. Code Regs. tit. 11, § 1208, subd. (a).

⁶⁴ The officer's response must be served upon POST within 14 calendar days of the date of the mailing of the Order of Immediate Temporary Suspension, either by personal delivery on POST headquarters, or by mail, postmarked no later than 14 calendar days of the date of mailing of the order to the peace officer. (Cal. Code Reg. tit. 11, § 1208, subd. (a)(1)(A).)

⁶⁵ Cal. Code Regs. tit. 11, § 1208, subd. (a)(1)(B).

⁶⁶ Cal. Code Regs. tit. 11, § 1208, subd. (a)(1)(B).

⁶⁷ Pen. Code, § 13510.8, subd. (c)(2).

⁶⁸ Pen. Code, § 13510.8, subd. (c)(5).

DRAFT REPORT – PENDING EDITING AND REVIEW

This draft is a product of various subcommittees of the Racial and Identity Profiling Advisory Board. It has been provided merely for the Racial and Identity Profiling Advisory Board's consideration and its content does not necessarily reflect the views of any individual RIPA Board member, the full RIPA Board, or the California Department of Justice.

limitation for investigation in evaluating whether to revoke certification for the incident under investigation.⁶⁹ An investigation by POSAD is considered complete once POSAD issues notice to the peace officer of its intent to deny, suspend, or revoke certification.⁷⁰ The time limit for POSAD's investigation is tolled during the appeal of a termination or other disciplinary action through an administrative or judicial proceeding or during any criminal prosecution of a peace officer.⁷¹

If POSAD finds reasonable grounds for the denial, revocation, or suspension of a peace officer's certification, POSAD must take appropriate steps to promptly notify the peace officer in writing of its determination, the reasons for its determination, provide a detailed explanation of the decertification procedure, and provide notice of the officer's rights to contest and appeal.⁷²

Within 30 days of receiving notice from POSAD, the officer may file a request for review of the determination by the Accountability Board and POST.⁷³ If the peace officer files a timely request for review, the Accountability Board will schedule the case for a hearing. If the peace officer does not file a timely request for review, the officer's certification will be suspended or revoked without further proceedings.⁷⁴

Instead of appealing the decision, the officer can voluntarily surrender their certification.⁷⁵ The case will be administratively closed without further legal proceedings, and the person would be permanently ineligible for employment as a peace officer. Voluntary permanent surrender of certification will have the same effect as revocation, meaning that the certification cannot be reactivated.⁷⁶

6. Accountability Board Hearing

If the peace officer appeals POSAD's determination, POST will schedule a public hearing before the Accountability Board.

⁶⁹ Pen. Code, § 13510.8, subd. (c)(5).

⁷⁰ Pen. Code, § 13510.8, subd. (c)(5).

⁷¹ Pen. Code, § 13510.8, subd. (c)(5).

⁷² Pen. Code, § 13510.85, subd. (a)(1). POST has issued a guide that is intended to serve that purpose. See POST, *Guide to Peace Officer Decertification Proceedings and Officer Rights to Contest and Appeal* (Aug. 2023) <https://post.ca.gov/portals/0/post_docs/resources/sb2/Guide_to_Decertification.pdf> [as of XX, 2024].

⁷³ Pen. Code, § 13510.85(a)(2); Cal. Code Regs. § 1209. The request for review must be received by POST or postmarked within 30 calendar days of the date of mailing of the notice of intent to suspend or revoke the officer's certification. Cal. Code Regs. § 1209, subd. (b); POST, *Guide to Decertification* at p. 6, https://post.ca.gov/portals/0/post_docs/resources/sb2/Guide_to_Decertification.pdf.

⁷⁴ Pen. Code, § 13510.85, subd. (a)(2).

⁷⁵ Cal. Code Regs., tit. 11, § 1209, subd. (c).

⁷⁶ POST, *Guide to Peace Officer Decertification*, at p. 6,

<https://post.ca.gov/portals/0/post_docs/resources/sb2/Guide_to_Decertification.pdf> [as of XX, 2024].

DRAFT REPORT – PENDING EDITING AND REVIEW

This draft is a product of various subcommittees of the Racial and Identity Profiling Advisory Board. It has been provided merely for the Racial and Identity Profiling Advisory Board's consideration and its content does not necessarily reflect the views of any individual RIPA Board member, the full RIPA Board, or the California Department of Justice.

During the hearing before the Accountability Board, POSAD will present its findings to the Accountability Board.⁷⁷ Following the conclusion of POSAD's presentation and any public comments related to the case, the Accountability Board will make a recommendation to POST by majority vote on what action should be taken on the certification of the peace officer involved. The Accountability Board may only recommend revocation if the factual basis for revocation is established by clear and convincing evidence.⁷⁸ If the Accountability Board determines that the facts and circumstances revealed by the investigation warrant a sanction other than revocation, it may recommend that a peace officer's certification be suspended for a period of time.⁷⁹ The Accountability Board must issue a written decision explaining its reasons for decertification or suspension.

7. Review by POST

Following the hearing by the Accountability Board, POST will review all recommendations made by the Accountability Board regarding the peace officer's certification. POSAD will also present its findings, including any information added to the record during the Accountability Board's hearing and recommendation, to POST.⁸⁰ Any decision by POST to adopt a recommendation by the Accountability Board to seek revocation requires a two-thirds vote of the POST commissioners present and must be based on whether the record, in its entirety, supports the Board's conclusion that serious misconduct has been established by clear and convincing evidence.⁸¹ If POST reaches a different determination than the Accountability Board's recommendation, POST must set forth its analysis and reasons for reaching a different determination in writing.⁸²

Because these hearings do not result in a determination as to whether serious misconduct actually occurred and only serve as a mechanism by which the Accountability Board and POST can make a preliminary determination as to whether the case should be referred for a full evidentiary hearing, the officer is not allowed to present witness testimony, evidence, or argument.⁸³⁸⁴ During these proceedings, the peace officer may be represented by counsel, but the officer and their counsel may only address the issue of the sufficiency of POSAD's findings during the public comment period.⁸⁵

⁷⁷ Pen. Code, § 13510.85, subd. (a)(4); Cal Code Regs. tit. 11, § 1209.

⁷⁸ Pen. Code, § 13510.85, subd. (a)(4).

⁷⁹ Pen. Code, § 13510.85, subd. (a)(4).

⁸⁰ Cal. Code Regs., tit. 11, § 1209.

⁸¹ Pen. Code, § 13510.85, subd. (a)(5).

⁸² Pen. Code, § 13510.85, subd. (a)(5).

⁸³ Cal. Code, Regs. tit. 11, § 1209, subd. (e)(2)(A).

⁸⁴ POST, *Guide to Peace Officer Decertification* at p. 6,

https://post.ca.gov/portals/0/post_docs/resources/sb2/Guide_to_Decertification.pdf [as of XX, 2024].

⁸⁵ Cal Code Regs. tit. 11, § 1209, subd. (e)(2)(B).

DRAFT REPORT – PENDING EDITING AND REVIEW

This draft is a product of various subcommittees of the Racial and Identity Profiling Advisory Board. It has been provided merely for the Racial and Identity Profiling Advisory Board's consideration and its content does not necessarily reflect the views of any individual RIPA Board member, the full RIPA Board, or the California Department of Justice.

Following its review, if POST determines that action should be taken against the officer, it will return the matter to POSAD for further proceedings. POSAD will initiate proceedings for a formal hearing before an administrative law judge (ALJ) by filing an Accusation or Statement of Issues with the Office of Administrative Hearings (OAH).⁸⁶ Formal hearing before an administrative law judge.⁸⁷ If POST, however, rejects the Accountability Board's recommendation to suspend or revoke a certification, no further action is taken unless additional investigation is requested.⁸⁸

8. The Administrative Hearing

The administrative hearing on an officer's certification is conducted by an ALJ in a public hearing.⁸⁹ The hearing is similar to a civil court trial. The officer may be represented by counsel, and each party is given an opportunity to make an opening statement, call witnesses, and offer other relevant evidence. After all the evidence is submitted, the parties may making closing arguments, orally or in writing. In most cases, the ALJ prepares a detailed written decision within 30 days.⁹⁰

The proposed decision by the ALJ may be adopted by POST as its final decision, or POST may take other action following receipt of the ALJ's proposed decision. Thirty days after it receives the ALJ's proposed decision, POST must file a copy of the proposed decision as a public record and serve a copy on each party and their attorney.⁹¹ POST's act of filing and serving the proposed decision is not deemed an adoption of ALJ's decision.

9. POST's Decision

Within 100 days of receipt of the ALJ's proposed decision, POST may take one of the following actions:

⁸⁶ POST, *Guide to Peace Officer Decertification* at p. 8, <https://post.ca.gov/portals/0/post_docs/resources/sb2/Guide_to_Decertification.pdf> [as of XX, 2024].

⁸⁷ Pen. Code, § 13510.85, subd. (a)(6).⁸⁷ The hearing is held in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 1150) of part 1 of Division 3 of Title 2 of the Government Code, and is subject to judicial review.

⁸⁸ https://post.ca.gov/portals/0/post_docs/resources/sb2/Peace_Officer_Decertification_Workflow.pdf

⁸⁹ Any records introduced during the hearings of the Board and the ALJ and the review by POST are public. These public records may, in the discretion of POSAD, be redacted for the reasons set forth in Penal Code section 832.7, subdivision (b)(6) and (7). This subdivision does not preclude the Accountability Board or POST, or both, from reviewing the unredacted versions of these records in closed session and using them as the basis for any action taken. (Pen. Code, § 13510.85, subd. (b).)

⁹⁰ OAH, About the Office of Administrative Hearings: About OAH: Hearings, <<https://www.dgs.ca.gov/OAH/About>> [as of XX, 2024]; POST, *Guide to Peace Officer Decertification* at p. 8, <https://post.ca.gov/portals/0/post_docs/resources/sb2/Guide_to_Decertification.pdf> [as of XX, 2024].

⁹¹ Gov. Code, § 11517, subd. (c)(1). ALJs preside over hearings in a manner similar to civil court trials unless local agency rules provide otherwise.

DRAFT REPORT – PENDING EDITING AND REVIEW

This draft is a product of various subcommittees of the Racial and Identity Profiling Advisory Board. It has been provided merely for the Racial and Identity Profiling Advisory Board's consideration and its content does not necessarily reflect the views of any individual RIPA Board member, the full RIPA Board, or the California Department of Justice.

- (1) Adopt the ALJ's proposed decision in its entirety.
- (2) Reduce or otherwise mitigate the proposed penalty and adopt the balance of the proposed decision.
- (3) Make technical or other minor changes in the proposed decision and adopt it as the decision.⁹²
- (4) Reject the proposed decision and refer the case to the same ALJ if reasonable available, otherwise to another ALJ, to take additional evidence.⁹³
- (5) Reject the proposed decision, and decide the case upon the record, including the transcript, or upon an agreed statement of the parties, with or without taking additional evidence. By stipulation of the parties, the agency may decide the case upon the record without including the transcript. If the agency takes this action, all of the following apply:
 - a. A copy of the record must be made available to the parties. The agency may require payment of fees covering direct costs of making the copy.
 - b. The agency itself may not decide any case without affording the parties the opportunity to present either oral or written argument before the agency itself. If additional oral evidence is introduced before the agency itself, no agency member may vote unless the member heard the additional oral evidence.
 - c. The authority of the agency itself to decide the case includes authority to decide some but not all issues in the case.
 - d. If the agency elects to take this action, the agency must issue its final decision not later than 100 days after rejection of the proposed decision. If the agency elects to take this action and has ordered a transcript of the proceedings before the ALJ, the agency must issue its final decision not later than 100 days after receipt of the transcript. If the agency finds that further delay is required by special circumstance, it must issue an order delaying the decision for no more than 30 days and specifying the reasons therefor. The order is subject to judicial review pursuant to Government Code section 11523.⁹⁴

If POST fails to take one of the above actions, within 100 days of receipt of the ALJ's proposed decision, the ALJ's proposed decision will be deemed adopted by the agency.⁹⁵ POST must file its decision immediately as a public record and serve a copy on each party and their attorney.⁹⁶

⁹² Action by the agency is limited to a clarifying change or a change of a similar nature that does not affect the factual or legal basis of the proposed decision.

⁹³ If the case is referred to an ALJ, the ALJ must prepare a revised proposed decision, based upon the additional evidence and the transcript and other papers that are part of the record of the prior hearing. A copy of the revised proposed decision must be provided to each party and their attorney.

⁹⁴ Gov. Code, § 11517, subd. (c)(2)(A) - (E).

⁹⁵ Gov. Code, § 11518, subd. (c)(2).

⁹⁶ Gov. Code, § 11517, subd. (d).

DRAFT REPORT – PENDING EDITING AND REVIEW

This draft is a product of various subcommittees of the Racial and Identity Profiling Advisory Board. It has been provided merely for the Racial and Identity Profiling Advisory Board's consideration and its content does not necessarily reflect the views of any individual RIPA Board member, the full RIPA Board, or the California Department of Justice.

POST’s decision will be considered final 30 days after the date of service of the decision upon the involved peace officer or their legal representative.⁹⁷ POST must publish the names of any peace officer whose certification is suspended or revoked and the basis for the suspension or revocation on the POST website.⁹⁸ POST must also notify the National Decertification Index of the International Association of Directors of Law Enforcement Standards and Training of the suspension or revocation.⁹⁹

Records of an investigation of any person by POST must be retained for 30 years following the date that the investigation is deemed concluded by POST. POST may destroy records prior to the expiration of the 30-year retention period if the subject is deceased and no action upon the complaint was taken by POST beyond POST’s initial intake of the complaint.¹⁰⁰

10. POST Certification Actions by the Numbers

a. SB 2 Top 10 Agencies

As of March 14, 2024, ten law enforcement agencies have had five or more SB 2 certification actions against an officer who was last employed by that agency. Generally, the most common type of serious misconduct is acts that violate the law.¹⁰¹ POST notes that 265—43% of California law enforcement agencies—have not submitted any misconduct reports to POST. However, only 23 of these agencies have 50 or more sworn officers.¹⁰²

Last Employing Agency	SB 2 Actions	Sworn Officers	Most Common Certification Action	Most Common Serious Misconduct
Los Angeles County SD	30	9185	13 Temporary Suspensions	8 Acts that Violate the law
California Highway Patrol	12	6651	8 Temporary Suspensions	7 Physical Assault/Excessive Force

⁹⁷ A copy of the written decision must be provided to (1) the Accountability Board, (2) POSAD, (3) the involved peace officer or designated representative, and (4) the head of the agency that employs or employed the involved peace officer. Cal. Code Regs., tit. § 1212, subd. (c)(3).

⁹⁸ Cal. Code Regs., tit. 11, § 1212, subd. (d). The list of officers whose certification is suspended or revoked and the basis for the suspension or revocation is available at <https://post.ca.gov/Peace-Officer-Certification-Actions>.

⁹⁹ Pen. Code, § 13510.85, subd. (c); Cal. Code Regs. § 1212, subd. (d).

¹⁰⁰ Pen. Code, § 13510.8, subd. (e).

¹⁰¹ POST, *Peace Officer Certification Actions*, <<https://post.ca.gov/Peace-Officer-Certification-Actions>> [as of XX, 2024].

¹⁰² POST, *Penal Code § 13512 Annual Report 2023*, p. 13, <https://post.ca.gov/Portals/0/post_docs/publications/2023_POSAD_Report.pdf> [as of XX, 2024].

DRAFT REPORT – PENDING EDITING AND REVIEW

This draft is a product of various subcommittees of the Racial and Identity Profiling Advisory Board. It has been provided merely for the Racial and Identity Profiling Advisory Board’s consideration and its content does not necessarily reflect the views of any individual RIPA Board member, the full RIPA Board, or the California Department of Justice.

Los Angeles PD	11	9226	5 Ineligible Pursuant to GC 1029	5 Acts that Violate the law
Torrance PD	8	180	8 Temporary Suspensions	5 Demonstrating Bias
Antioch PD	6	101	6 Temporary Suspensions	5 Acts that Violate the law
Alameda County SD	5	1062	4 Temporary Suspensions	3 Acts that Violate the law
Riverside County SD	5	1659	2 Temporary Suspensions & 2 Ineligible Pursuant to GC 1029	2 Acts that Violate the law
San Bernardino County SD	5	1875	3 Ineligible Pursuant to GC 1029	2 Acts that Violate the law
San Francisco PD	5	1942	4 Temporary Suspensions	4 Acts that Violate the law
Tulare County SO	5	502	3 Ineligible Pursuant to GC 1029	1 Sexual Assault

b. Temporary Suspensions

Currently, temporary suspensions make up around half of all certification actions. As of March 14, 2024, seventy-eight temporary suspensions are related to a pending criminal proceeding, with an average length of 224 days. Twenty-three temporary suspensions with an average length of 260 days are not related to a pending criminal proceeding, typically related to serious misconduct of a discharged or retired officer. As of March 14, 2024, a total of fourteen temporary suspensions had been brought to a final disposition. The four temporary suspensions resolved relating to a criminal proceeding had an average length of 153 days, whereas the ten other resolved temporary suspensions had an average length of 181 days.¹⁰³

11. Gaps in the Decertification Process

¹⁰³ POST, *Peace Officer Certification Actions*, <<https://post.ca.gov/Peace-Officer-Certification-Actions>> [as of XX, 2024].

DRAFT REPORT – PENDING EDITING AND REVIEW

This draft is a product of various subcommittees of the Racial and Identity Profiling Advisory Board. It has been provided merely for the Racial and Identity Profiling Advisory Board’s consideration and its content does not necessarily reflect the views of any individual RIPA Board member, the full RIPA Board, or the California Department of Justice.

While SB 2 established a needed statewide process for decertification of officers who engage in serious misconduct, there are still some gaps in the decertification process.

If an officer chooses to voluntarily surrender their certification upon a finding of serious misconduct, an officer could still work as a peace officer in another state. The officer's surrender of their certificate, however, will be entered into the National Decertification Database administered by the International Association of directors of Law Enforcement Standards and Training and the POST website. The officer will also be prohibited from serving as a peace officer in the State of California.

DRAFT

DRAFT REPORT – PENDING EDITING AND REVIEW

This draft is a product of various subcommittees of the Racial and Identity Profiling Advisory Board. It has been provided merely for the Racial and Identity Profiling Advisory Board's consideration and its content does not necessarily reflect the views of any individual RIPA Board member, the full RIPA Board, or the California Department of Justice.