

CALIFORNIA DEPARTMENT OF JUSTICE

TITLE 11. LAW

DIVISION 1. ATTORNEY GENERAL

CHAPTER 11. CALIFORNIA LAW ENFORCEMENT ACCOUNTABILITY REFORM ACT

INITIAL STATEMENT OF REASONS

PROBLEM STATEMENT

The California Law Enforcement Accountability Reform Act, Assembly Bill 655 (2022), codified at Penal Code sections 13680-13683 (“AB 655”), took effect on January 1, 2023, and was amended effective January 1, 2024. The author of the bill identified its purpose as follows:

“Over the past fifteen years, the FBI has identified organizations committed to 'domestic terrorism' that include militia extremists and white supremacist extremists with active links to law enforcement. Without any coordinated federal response to this prevalent issue, state action is long overdue. Sheriff's departments across our state have been plagued by texting, email, and social media scandals where officers exchanged racist and homophobic messages. Continued failure to address extremism, racism, and bias among peace officers enables this behavior to continue and contributes to the erosion of public confidence in law enforcement.

To increase public trust in law enforcement AB 655 will help root out those who would jeopardize public safety with their extremist and violent behavior.”¹

In keeping with this goal of rooting out officers who have engaged in this extremist and violent behavior, AB 655 identifies three categories of misconduct covered by this law—membership in a hate group, participation in hate group activity, and advocacy of public expressions of hate—where such conduct was undertaken within the last seven years and after the subject peace officer had reached the age of eighteen (together, “Covered Misconduct”).² (Pen. Code, § 13680, subs. (d), (e), (g)(1); *id.*, § 13681, subd. (b).) Public agencies are required to determine whether any candidate for a peace officer position has engaged in Covered Misconduct and to deny employment if so. (Pen. Code, § 13681, subs. (a), (b).) Likewise, if a public agency receives a complaint that one of its peace officers has engaged in Covered Misconduct, the agency must

¹ August 25, 2022, Assembly Floor Analysis, available at https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202120220AB655; *see also* legislative analyses available at

https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202120220AB655.

² The term “Covered Misconduct” is defined in the Proposed Regulations. (*See* § 941, subd. (f).) Throughout this document, terms defined in the Proposed Regulations are capitalized where reference to their specific definitions may be important or necessary to understanding the matter being discussed. Terms defined in the Proposed Regulations are otherwise left uncapitalized. Whether or not a term is capitalized in this document is not intended to convey substantive meaning.

investigate, or cause to be investigated by an Appropriate Oversight Agency, the complaint and, where a sustained finding of misconduct is reached, must “remove [the officer] from appointment as a peace officer.” (Pen. Code, § 13682, subs. (a), (b).) Records relating to investigations pursuant to a complaint that an existing peace officer engaged in Covered Misconduct that result in a sustained finding are exempted from certain existing confidentiality protections. (Pen. Code, § 13683.)

The Department of Justice (“Department”) is directed to “adopt and promulgate guidelines for the investigation and adjudication of complaints” that “allege[], with sufficient particularity to investigate the matter, that a peace officer” has engaged in Covered Misconduct, whether such complaint is internal or received from the public. (Pen. Code, § 13682, subs. (a), (c).)

In fulfilling its obligation to promulgate such regulations, the Department must ensure that affected agencies are provided with clear rules to facilitate the acceptance of complaints in all forms, the determination of what constitutes “sufficient particularity” to warrant investigation, the effective and efficient investigation of such complaints, and their fair adjudication. In so doing, the Department must balance the statute’s interest in promoting effective, efficient, and timely investigation and resolution of Covered Misconduct with the need to protect peace officer due process interests and avoid undue burden on affected agencies.

BENEFITS ANTICIPATED FROM REGULATORY ACTION

As noted above, AB 655 requires the Department to adopt and promulgate rules governing the investigation and adjudication of complaints that existing peace officers have engaged in Covered Misconduct. The overarching benefits of the proposed regulatory action are anticipated to give effect to the expressed purpose of the statute, namely, “[t]o increase public trust in law enforcement” and to “root out those who would jeopardize public safety with their extremist and violent behavior.”³ Broadly speaking, such efforts should also be expected to reduce incidences of bias in law enforcement activity, to reduce the number and severity of use-of-force incidents, and to promote efficiency in law enforcement agencies by removing from service peace officers who may be prone to more frequent or more severe misconduct. As a result, the implementation of AB 655 through the proposed regulations will benefit public health and welfare and promote worker safety among personnel of law enforcement agencies.

Within these broad aims, the proposed regulations are specifically anticipated to promote the quality of law enforcement internal investigation and adjudication processes. The proposed regulations clarify terms and concepts presented in the statute to avoid inconsistency, arbitrariness, and confusion in investigations and adjudications conducted pursuant to AB 655. The regulations also clarify the relationship between Covered Misconduct and “serious misconduct” that must be reported to the Commission on Peace Officer Standards and Training (“POST”) at certain stages following receipt of a complaint. (*See* Pen. Code, §§ 13510.8, 13510.9.) These clarifications will help to establish law enforcement agency reporting obligations and avoid uncertainty or duplicative processes.

³ August 25, 2022, Assembly Floor Analysis, available at https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202120220AB655.

The investigations governed by the proposed regulations are initiated by an “internal complaint or complaint from a member of the public that alleges, with sufficient particularity to investigate the matter,” that a peace officer has engaged in Covered Misconduct. (Pen. Code, § 13682, subd. (a).) The proposed regulations establish standards for receiving complaints, particularly with respect to ensuring accessibility and avoiding intimidation of public complainants. The proposed regulations also establish uniform standards for “sufficient particularity to investigate” to ensure that complaints that warrant investigation are pursued.

The proposed regulations also establish uniform standards for investigations conducted pursuant to AB 655, including standards for investigator qualifications and time frames for investigation completion, while providing agencies with flexibility when developing their policies where appropriate to best suit the needs of their specific organizations. For clarity, the proposed regulations also identify specific areas wherein AB 655 supersedes existing statutes, ordinances and policies flowing from collective bargaining agreements, and other sources, with the goal of giving agency investigators discretion necessary to give effect to the intent of the statute. The further anticipated benefit will be more effective and efficient investigations of Covered Misconduct, uniformity among law enforcement agencies, and avoidance of confusion over how AB 655 interacts with other sources of law or policy.

Finally, the proposed regulations establish uniform standards related to the adjudication of Covered Misconduct. The regulations establish the elements of each covered offense to ensure consistent adjudication. The proposed regulations also impose some structure on the adjudication process by requiring that investigators produce specific findings of fact and requiring that those entrusted to determine if complaints are sustained explicitly either concur with or dispute those findings. This structure ensures that agency executives can fully and meaningfully engage with the evidence provided through the investigation and to promote both accountability and transparency.

SPECIFIC PURPOSE AND NECESSITY OF EACH SECTION

AB 655 requires the Department to “adopt and promulgate guidelines for the investigation and adjudication of complaints” that allege, “with sufficient particularity to investigate the matter,” that a peace officer has engaged in Covered Misconduct, whether such complaint is internal or received from the public. (Pen. Code, § 13682, subds. (a), (b).) The Department submits these proposed regulations to fulfill this mandate, and to provide clarity and guidance to affected law enforcement agencies and their officers regarding their obligations when they receive complaints alleging the misconduct identified in AB 655.

Article 1. Definitions

§ 941. Definitions.

These subdivisions define specific terms used within the regulations to clarify the meaning of those terms and to ensure consistency in their application. Some definitions in this section refer back to definitions provided in the statute (*see* Pen. Code, § 13680), others define terms used in the statute but not defined, and a final group of definitions are terms introduced in these regulations.

§ 941, subd. (a). “**Adjudicating Agency**” is a term introduced in the proposed regulations. “Adjudication” is a term used in Penal Code section 13682, subdivision (c). Subdivision (c) provides that “[t]he Department of Justice shall adopt and promulgate guidelines for the investigation and adjudication of complaints described in subdivision (a) by a public agency or oversight agency.” As explained below, the regulations assign the term “Investigating Agency” to the agency responsible for accepting a complaint directly or by referral and then conducting the assessment and investigation required by the statute. (*See* Pen. Code, § 13682, subds. (a), (c); Proposed Regulations § 941, subd. (n).) Recognizing that jurisdictions may presently have in place a structure wherein separate agencies are responsible for the investigation and adjudication phases, or may wish to assign the investigation and adjudication functions required under this statute to different agencies, the regulations use the term “Adjudicating Agency” to specify the agency responsible for adjudication to encompass circumstances where that agency is distinct from the agency responsible for investigation. The term also clarifies the scope of the adjudication function that is undefined in the statute. Such clarification is necessary to further the Department’s mandate and to permit usage of the term elsewhere in the proposed regulations.

§ 941, subd. (b). To “**Advocate**” and its noun form “**Advocacy**” are used in defining and referring back to the statutorily defined terms “hate group” and “public expression of hate.” (*See* Pen. Code, §§ 13680, subds. (c), (g); 13681, subd. (b); 13682, subd. (a); 13683, subd. (a).) However, neither “advocate” nor “advocacy” is defined in the statute. The term “Advocate” is defined in the regulations as “to communicate, to at least one other person, any form of Support for a person, Organization, or concept” (for example, the concepts of Genocide or the commission of hate crimes). By incorporating the term “Support” in this definition, which is defined in the regulations as “provid[ing] any form of encouragement, agreement, or assistance to a person, Organization, concept, plan, or objective” (*see* § 941, subd. (v)), this definition aligns with the legislative intent regarding the misconduct AB 655 seeks to address and, by providing clarity to the regulations where these terms are used, ensures consistency in AB 655’s implementation.

§ 941, subd. (c). “**Appropriate Oversight Agency**” is a term used, but not defined, in Penal Code section 13682, subdivision (a). Subdivision (a) establishes the requirement that “any public agency that employs peace officers shall investigate, or cause to be investigated by the appropriate oversight agency” certain complaints of Covered Misconduct. (*See also* Pen. Code, §§ 13682, subd. (c) and 13683, subd. (a) [both also referencing “oversight agency.”].)

The statutory meaning of the term “oversight agency” can vary depending on the context,⁴ but the most analogous is the use of the term “oversight agency” referenced in Penal Code section 832.7, in the context of records relating to incidents in which a sustained finding was made by any law enforcement agency or oversight agency that a peace officer or custodial officer engaged in certain types of misconduct. (*See* Pen. Code, § 832.7, subds. (b)(1)(B)(i), (b)(1)(C).) The

⁴ *See, e.g.*, Wat. Code, § 13397.5, subd. (e) [defining “oversight agency” to mean either the state board or regional board, in the context of improving water quality by remediating abandoned mined lands]; Health & Saf. Code, § 44105 [setting forth responsibilities of the state oversight agency responsible for implementing the Accelerated Light-Duty Vehicle Retirement Program].

Department anticipates that the oversight agencies in Section 832.7 will be similar to the ones contemplated in Section 13682 because both code sections reference these agencies in the context of investigating claims of misconduct against peace officers.

Oversight agencies in California that exercise oversight over law enforcement agencies vary widely by jurisdiction, including city councils, county boards of supervisors, district attorney's offices, civilian oversight commissions, and inspector general's offices. The proposed definition does not expressly limit the nature or function of the oversight agency, and is intentionally broad to capture the wide range of reporting and organizational relationships that law enforcement agencies may have with their oversight agencies.

Accordingly, to effectuate the purpose of the statute, this definition clarifies that it must be an agency that, "in the normal course of business," investigates or prosecutes charges that peace officers have engaged in misconduct and, further, has authority to investigate peace officers employed by the employing agency at issue.

This provision further acknowledges the possibility that a federal agency may fill the role of an Appropriate Oversight Agency, including as an Investigating Agency or Adjudicating Agency, in certain circumstances. Such circumstances may include when a federal agency has exerted control of an Employing Agency, as might be provided in a consent decree. These regulations may be of use to a federal agency in this role, but ultimately cannot bind the federal agency.

§ 941, subd. (d). To "Coordinate" or "Coordination." The term "coordination" is used, but not defined, in the statute's definition of "participation in hate group activity" (*see* Pen. Code, § 13680, subs. (e)), and the related terms "coordinate" and "coordinated" are used in the regulations in that same definition and that of the term "further" (*See* § 941, subs.(j), (q)), as well as in the elements that must be established for a complaint of "participation in hate group activity" to be sustained. (*See* § 949, subd. (b)(4).) To ensure a consistent application of these terms, the regulation incorporates a common understanding of the term "coordinate" with emphasis on the context of Covered Misconduct as provided in the statute.

§ 941, subd. (e). "Covered Complaint" is a term introduced in the proposed regulations. The term is used as shorthand for the types of complaints referenced in Penal Code section 13682, subdivision (a). Subdivision (a) provides that the event that establishes an agency's obligations to commence an investigation is an "internal complaint or complaint from a member of the public. . . ." The proposed regulation also clarifies the meaning of the "internal complaint" and a "public complaint," as those terms are not defined in the statute.

Providing a uniform definition is critical because, with respect to civilian complaints, the California Racial and Identity Profiling Advisory ("RIPA") Board has highlighted the lack of uniformity regarding what constitutes such a complaint and noted that there is "no professional consensus within California on a definition." (*See* 2020 RIPA Annual Report at p. 65, available at <https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/ripa-board-report-2020.pdf>.) For example, because there is no uniform consensus on what constitutes a civilian complaint, some agencies may consider a verbal complaint from a member of the public to be a "complaint" triggering their reporting requirements under Penal Code section 832.5, while others do not. (*Ibid.*) Accordingly, to ensure consistency and robust enforcement of AB 655, it is necessary to define

“complaint,” “internal complaint,” and “public complaint.” Without such definitions, it would be unclear what triggers the agency’s obligations, and, as a logical consequence, the agency’s obligations in accepting any such complaints.

In keeping with the statute’s intent both to effectively identify covered misconduct and to strengthen public accountability, this provision defines complaints broadly to ensure that all colorable allegations indicating misconduct are considered by the employing agency or appropriate oversight agency. “Internal Complaint” is given its commonly used meaning of a complaint made by personnel within the agency at issue. “Public Complaint” is defined broadly to cover all complaints that are not internal complaints. This broad definition is necessary to ensure that complaints that are not internal but might not be conventionally considered public—a referral from another agency, for example—are understood to establish an agency’s obligations.

The definition also clarifies that complaints alleging misconduct covered by AB 655 are still considered “Covered Complaints” and must be accepted even if they ultimately lack “sufficient particularity to investigate” the matter. This ensures that proper recording and tracking can occur, so as to ensure, through supervisory review and/or auditing, that cognizable complaints are not prematurely disregarded. This is necessary to promote transparency and public trust.

§ 941, subd. (f). “Covered Misconduct” is a term introduced in the proposed regulations. The term is used as shorthand for the phrase “engaged in membership in a hate group, participation in any hate group activity or advocacy of any public expressions of hate” used in Section 13682, subdivision (a) to describe the type of allegations raised in an internal or public complaint that will require an investigation of the complaint pursuant to AB 655, and if the conduct at issue has taken place within the past seven years and after the Subject has reached the age of 18. The terms “hate group,” “membership in a hate group,” “participation in any hate group activity,” and “public expression of hate” are already defined in the statute. (*See* Pen. Code, § 13680, subs. (d), (e), (g)(1).) Accordingly, the regulations define these three categories of alleged misconduct collectively as “Covered Misconduct” for brevity and consistency, while also incorporating the statute’s requirement that the conduct at issue has taken place within the past seven years and after the Subject has reached the age of 18.

§ 941, subd. (g). “Employing Agency” is a term introduced in the proposed regulations. Penal Code section 13682, subdivision (a) establishes that “any public agency that employs peace officers [as defined in Section 13680, subdivision (f)]” incurs certain obligations with respect to a peace officer in its employ upon receipt of “any internal complaint or complaint from a member of the public” that includes certain allegations. However, the statute does not include a defined term to refer to the agency that employs an officer who is the subject of such a complaint. Moreover, there is potential for confusion insofar as the public agency that employs the subject might be different from the public agency that investigates the subject. For this reason, it is necessary to adopt a defined term for the employing agency.

The defined term tracks the language in the statute regarding who is a “peace officer,” because that definition defines which agencies employing that peace officer are subject to these regulations. Specifically, the term “peace officer” in the statute is defined as a person described within the provisions of the Penal Code identifying peace officers (Pen. Code, § 830 et seq.), who is “employed by an agency or department of the state, or any political subdivision thereof,

that provides uniformed police services to members of the public. . . .” (Pen. Code, § 13680, subd. (f).) The term “peace officer” also includes “any state or local correctional or custodial officer, and any parole or probation officer.” (*Ibid.*)

§ 941, subd. (h). To “Facilitate” or “Facilitation.” The term “facilitation” is used, but not defined, in the statute’s definition of “participation in hate group activity” and the corresponding definition in the regulations (*See* Pen. Code, § 13680, subd. (e)); Proposed Regulations, § 941, subd. (q)). The related term “facilitate” is used in the regulations with respect to the definition of the term “Further,” and the elements that must be established for a complaint of “participation in any hate group activity” to be sustained. (*See* Proposed Regulations, § 941, subd. (h), § 949, subd. (b)(4).) To ensure clarity and consistency, the definition of the term “facilitate” in the regulations comports with common usage, with emphasis on the context of Covered Misconduct as provided in the statute.

§ 941, subd. (i). “Findings” is a term used generally in the statute but given specific meaning in the proposed regulations. The proposed definition, which identifies the necessary components of an investigator’s findings, is necessary to ensure consistency across different law enforcement agencies and to provide law enforcement and/or oversight agencies with critical information to determine if a complaint should be sustained. These proposed components align with best practices.⁵

§ 941, subd. (j). To “Further” is a term used, but not defined, in the statute’s definition of “membership in a hate group.” (*See* Pen. Code, § 13680, subd. (d).) Based on common usage and consistent with the context of the misconduct at issue under the statute, the definition incorporates the defined terms “advocate,” “coordinate,” “facilitate,” and “support.”

§ 941, subd. (k). “Genocide” has the definition provided in the statute. (*See* Pen. Code, § 13680, subd. (a).)

§ 941, subd. (l). “Hate Crime” has the definition provided in the statute. (*See* Pen. Code, § 13680, subd. (b).)

§ 941, subd. (m). “Hate Group” has the definition provided in the statute. (*See* Pen. Code, § 13680, subd. (c).)

§ 941, subd. (n). “Investigating Agency” is a term introduced in the proposed regulations. Penal Code section 13682, subdivision (a), requires that “any public agency that employs peace

⁵*See, e.g.*, “Law Enforcement Departments Have Not Adequately Guarded Against Biased Conduct,” Auditor of the State of California (2022), p. 10, available at <https://information.auditor.ca.gov/pdfs/reports/2021-105.pdf> (ca.gov) [recognizing that law enforcement policies “should require that investigations include a formal determination that makes clear whether biased conduct occurred or not, as well as the rationale for reaching the determination”]; Consent Decree, *U.S. v. Police Dept. of Baltimore City* (D.Md. Jan. 12, 2017) No. 1:17-cv-00099 (“Baltimore Consent Decree”), pp. 126-127, para 351, available at https://www.baltimorepolice.org/sites/default/files/General_Website_PDFs/Baltimore_Police_Consent_Decree_3.pdf [components of required investigation reports].

officers shall investigate, or cause to be investigated by the appropriate oversight agency” certain complaints. Because responsibility for the investigation process may lie with either the Employing Agency or an Appropriate Oversight Agency, the term “Investigating Agency” is used to refer to the agency that is responsible for investigating a particular complaint. This definition is necessary for clarity in the application of regulations governing the investigation and adjudication process. (*See* Pen. Code, § 13682, subd. (c).) The term “**Investigating Unit**” is further defined as the component of the Investigating Agency responsible for assessment and investigation of a Covered Complaint. This term is necessary to distinguish this particular component of the Investigating Agency from other components, such as when discussing the referral of a Covered Complaint from intake personnel to the Investigating Unit, or where the Investigating Agency and Adjudicating Agency are the same agency.

§ 941, subd. (o). “Membership in a Hate Group” has the definition provided in the statute. (*See* Pen. Code, § 13680, subd. (d).)

§ 941, subd. (p). “Organization” is a term used in the definition of “hate group” in the statute (*see* Pen. Code, § 13680, subd. (c), defining a “hate group” as “an organization that supports, advocates for, threatens, or practices genocide or the commission of hate crimes”), which is also the same definition of “hate group” in the proposed regulations. The conventional definition of “organization” is “[a] group that has formed for a particular purpose.” (*See* Black’s Law Dictionary (11th ed. 2019).) Because the conventional definition is so broad, potentially covering every group from a corporation to a mob that assembles *sua sponte* among strangers regarding a vast array of purposes, it is necessary to give a more concrete definition of the term.

The proposed definition includes groups as small as two people; this number is based on the statutory definition of “conspiracy.” (*See* Pen. Code, § 182, subd. (a).) The proposed definition then lists four indicia that a group is sufficiently organized and purposeful with respect to the relevant misconduct when read in the context of the definition of a Hate Group so as to effectuate the Legislature’s intent.

§ 941, subd. (q). “Participation in Any Hate Group Activity” has the definition provided in the statute. (*See* Pen. Code, § 13680, subd. (e).)

§ 941, subd. (r). “Peace Officer” has the definition provided in the statute, as amended. (*See* Pen. Code, § 13680, subd. (f).)

§ 941, subd. (s). “Public Expression of Hate” has the definition provided in the statute. (*See* Pen. Code, § 13680, subd. (g).)

§ 941, subd. (t). “Sufficient Particularity to Investigate” is a term used, but not defined, in the statute. An agency is required to investigate complaints that allege, “with sufficient particularity to investigate the matter, that a peace officer” engaged in Covered Misconduct. (*See* Pen. Code, § 13682, subd. (a).) The concept of “sufficient particularity to investigate,” therefore, effectively controls whether the obligations imposed by Section 13682 are triggered. For this reason, it is necessary to provide a specific definition to guide affected agencies in understanding their responsibilities.

The proposed definition seeks to avoid situations in which a received complaint might be seen as not imposing obligations under Penal Code section 13682 because it lacks certain details on its face, even though a reasonable inquiry could potentially reveal Covered Misconduct. The proposed definition looks to the existence of details in the complaint that “indicates further investigative activities may be reasonably calculated to prove or disprove any material allegations in that complaint.” (Proposed Regulations, § 941, subd. (t).) The concept of “reasonably calculated” comes from the evidentiary standard governing what evidence a party may seek in discovery. (*See* Code Civ. Proc., § 2017.010 (“[A] party may obtain discovery . . . if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence.”).) As with the evaluation of whether efforts to obtain discovery are overreaching, the inquiry here turns on an evaluation of whether there are identifiable steps that can reasonably be expected to lead to relevant information.

§ 941, subd. (u). “**Subject**” is a term introduced in the proposed regulations to refer to the officer who is alleged to have engaged in Covered Misconduct, or whose Covered Misconduct is discovered in the course of an investigation pursuant to this statute. Penal Code section 13682, subd. (a), describes complaints of misconduct by a “peace officer,” which is defined in the statute. The term “subject” is introduced for brevity.

§ 941, subd. (v). **To “Support”** is a term used, but not defined, in the statutory definition of “hate group” and “public expression of hate.” (*See* Pen. Code, §13680, subs. (c), (g).) The term is likewise used in these proposed regulations in defining the terms “advocate,” “further,” “hate group,” and “public expression of hate” (*see* § 941, subs. (b), (j), (m), (s)), as well as in the elements used to establish whether a complaint of public expression of hate should be sustained (*see* § 949, subd. (c)(3)). For clarity and comports with that term’s common usage, the definition provided in the regulations is broad to effectuate the statute’s purpose. And to provide further guidance of that term in the context of the misconduct covered by AB 655, the regulation provides numerous examples of support, including, without limitation, “financial support; enrollment as a member of an organization; public association of one’s name or identity with any person, organization, concept, plan, or objective; or providing labor to any person, organization, concept, plan, or objective.”

§ 941, subd. (w). “**To Sustain**” or “**Sustained**” has the definition provided in the statute. (Pen. Code, § 13680, subd. (h).)

Article 2. Investigations

§ 942. Responsibility.

§ 942, subd. (a). As a threshold step, this subdivision requires every Employing Agency, within six months of the effective date of these regulations and in consultation with other involved agencies, to develop and implement policies regarding which agency or agencies—whether Employing Agencies or Appropriate Oversight Agencies—will have responsibility for investigations and adjudications. Development of such policies is standard practice with respect to public complaints as law enforcement agencies employing peace officers are already under a duty to develop and publicize policies regarding investigating complaints against peace officers from civilians. (*See* Pen. Code, § 832.5, subd. (a).) This proposed regulation will extend that duty

to internal complaints to capture the breadth of complaints covered by AB 655 and provides agencies with flexibility in establishing their policies so long as they are consistent with these regulations.

Six months will give agencies adequate time to develop these policies while ensuring that they do not delay in doing so. Moreover, given the statute's intent of increasing transparency and building trust with the public, decisions about the assignment of investigations under this statute must be based on a written policy, with that policy readily available to the public to promote accountability.

§ 942, subd. (b). This provision allows Employing Agencies to assign responsibility for investigating and adjudicating complaints based upon relevant factors, including, without limitation, available resources, the nature of the allegations (for example, if they allege criminal conduct), or the avoidance of conflicts of interest.

This provision is necessary to give agencies the flexibility to craft policies that are reflective of their unique circumstances, giving Employing Agencies as much flexibility as possible, within the boundaries set by any superior agencies (*e.g.*, a city council, police commission, or board of supervisors). Such flexibility is necessary to develop policies that will be most effective for a given agency. For example, some agencies may already have in place oversight agencies that can be assigned responsibility for investigating complaints, while other agencies may handle complaints themselves. And agencies range in size, which will necessarily impact the resources they have available in determining investigative and adjudicative responsibility for complaints.

The provision requires that any such policies developed assigning such responsibility be consistent with all other provisions set forth in the regulations. This provision also specifies that the Employing Agency's policy is subject to applicable law. In effect, this means that an authority over the Employing Agency, like a local legislative body, would be empowered to make the determination of which agencies are responsible for investigation and adjudication.

§ 942, subd. (c). This provision requires the Employing Agency, subject to applicable law, to identify an alternate Investigating Agency to handle investigation of a complaint where there would otherwise be a conflict of interest or other impediment preventing the investigation. This process is addressed in § 947, subds. (a), (b). This provision is necessary to prevent a situation in which the goals of the statute are defeated because an agency is unable to complete a statutorily required investigation or undertakes an investigation that is incomplete or biased due to issues like undue influence on the investigator.

§ 942, subd. (d). This provision clarifies that the governmental entities with lawmaking authority over the Employing Agency have the power to dictate which agencies will be designated Investigating Agencies and Adjudicating Agencies. It further clarifies that such responsibility is not subject to collective bargaining or private agreement. This provision is necessary to clarify that the statute and regulations do not remove Employing Agencies from government oversight and control.

§ 943. Public Complaints.

§ 943, subd. (a). This subdivision requires Employing Agencies and other Investigating Agencies, such as a non-employing Appropriate Oversight Agency, to accept complaints alleging Covered Misconduct (participation in any hate group activity, membership in a hate group, or public expressions of hate, as defined) by a peace officer of an Employing Agency. Recognizing that complaints against peace officers alleging Covered Misconduct are a subset of civilian complaints addressed in Penal Code section 832.5, this provision permits these AB 655 complaint procedures to be included in any complaint procedures required by Penal Code section 832.5, as long as the Section 832.5 procedures are consistent with these regulations.

This subdivision is necessary because AB 655 requires the Department to “promulgate guidelines for the investigation and adjudication of” certain “complaint[s] from [] member[s] of the public.” (*See* Pen. Code, § 13682, subds. (a), (c).) The acceptance and initial handling of public complaints (along with the acceptance of internal complaints) is therefore the first step in the process of investigation and adjudication for which the Department is required to promulgate regulations.

§ 943, subd. (b). An effective process for accepting and evaluating public complaints is both the foundation of an effective investigation and the basis on which an agency determines whether to even pursue an investigation. This subdivision, which requires that agencies accept complaints in any form, including written forms, oral forms, and sign language, seeks to eliminate any of the barriers that may keep members of the public from submitting complaints. The proposed requirement that complaints be accepted in non-written forms aligns with recommendations made by the RIPA Board.⁶

Moreover, as indicated by surveys the RIPA Board conducted regarding civilian complaint procedures, many agencies already permit complaints to be accepted in non-written forms.⁷ Such best practices have also been recommended by the United States Department of Justice (“USDOJ”) and have been incorporated in numerous law enforcement consent decrees.⁸ These

⁶ *See* 2018 RIPA Report, available at <https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/ripa-board-report-2018.pdf>, p. 32 [recommending that “law enforcement agencies use multiple methods to reach the greatest number of community members and allow complaints to be filed via phone, mail, email, fax, through an agency’s website and at the agency, as well as neutral locations, such as public libraries or community social service agencies.”]. *See also* 2019 RIPA Report, pp. 41-43, available at <https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/ripa-board-report-2019.pdf>.

⁷ 2018 RIPA Board Report, pp. 27-28, available at <https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/ripa-board-report-2018.pdf>.

⁸ *See, e.g.*, 2022 RIPA Report, pp. 230-231, available at <https://oag.ca.gov/system/files/media/ripa-board-report-2022.pdf>, citing U.S. DOJ Office of Community Oriented Policing Services, Police Executive Research Forum, “Critical Response Technical Assessment Review: Police Accountability—Findings and National Implications of an Assessment of the San Diego Police Department” (2015), p. 6 [“Consistent with accepted best practice, the SDPD has a multifaceted system for receiving complaints; community members in San Diego may file a complaint in person, by phone, by mail, or by e-mail.”], pp. 65-66 [discussing confidential anonymous complaint phone hotline established in 2011], available at <https://portal.cops.usdoj.gov/resourcecenter/content.ashx/cops-w0756-pub.pdf>; Baltimore

best practices are integral to an effective intake procedure, because determining whether a public complaint must be accepted can be prone to error and abuse of discretion.⁹

§ 943, subd. (c). This proposed subdivision requires AB 655 public complaints to be accepted anonymously. This requirement is necessary to ensure that colorable allegations by complainants who may be fearful of retaliation are not disregarded, in furtherance of the Legislature’s intent to root out the extremist conduct addressed by AB 655. This requirement is also in keeping with best practices and recommendations by the RIPA Board, as well as existing policies followed by numerous agencies.¹⁰ Indeed, POST explicitly accepts anonymous complaints.¹¹ Moreover, several consent decrees with law enforcement agencies likewise require agencies to accept

Consent Decree, *supra*, pp. 113-114, para. 336, available at <https://www.justice.gov/opa/file/925056/dl>; COPS Report, *supra*, p. 16, available at <https://portal.cops.usdoj.gov/resourcecenter/content.ashx/cops-p164-pub.pdf>; Stipulated Judgment, *People v. City of Bakersfield*, Case No. BCV-21-101928 (Kern County Superior Court, Aug. 27, 2021) (Bakersfield Stipulated Judgment), p. 38, para. 139, available at [https://oag.ca.gov/system/files/attachments/press-docs/Stipulation and Order.pdf](https://oag.ca.gov/system/files/attachments/press-docs/Stipulation%20and%20Order.pdf).

⁹ Office of Inspector General, County of Los Angeles, “Los Angeles County Sheriff’s Department: Review and Analysis of Misconduct Investigations and Disciplinary Process” (“2021 OIG Report”) (Feb. 2021), p. 4, available at https://assets-us-01.kc-usercontent.com/0234f496-d2b7-00b6-17a4-b43e949b70a2/dddb2ccf-34af-4e30-b6a8-7e9d610265d0/IIPublicReport_Body2.pdf [findings included that there was inconsistency in selecting which cases (and which employees) were investigated], p. 10 [some policies and procedures resulted in only some employees being investigated or disciplined]; 2019 California Attorney General’s Report & Recommendations re Sacramento Police Department, pp. 68-69 [SPD should adopt a general order that specifically addresses citizen complaint intake, classification and review to ensure Department-wide compliance and accountability], available at <https://oag.ca.gov/system/files/attachments/press-docs/spd-report.pdf>; 2020 California Attorney General’s Report & Recommendations Phase II re Sacramento Police Department, pp. 55-56 [“An effective personnel-complaint system should include, at a minimum, the following elements: (1) an intake system that encourages and accepts all complaints regardless of the source; (2) a centralized process for tracking complaints and assigning investigations of the complaints to appropriate personnel; (3) an investigation protocol that ensures that all complaints made by members of the public and all internal complaints, especially those of a serious nature, are investigated; and (4) regular auditing of investigation files to ensure that personnel complaints are investigated and resolved in a thorough, fair, and timely manner.”], available at [https://oag.ca.gov/system/files/attachments/press-docs/SPD Report Phase II 0.pdf](https://oag.ca.gov/system/files/attachments/press-docs/SPD_Report_Phase_II_0.pdf).

¹⁰ See 2019 RIPA Board Best Practice Recommendations, p. 41, available at <https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/ripa-best-practices-2019.pdf>; Los Angeles County Office of the Inspector General Complaint/Commendation website, available at <https://oig.lacounty.gov/file-a-complaint> [permitting anonymous complaints to be submitted online to the Los Angeles County Inspector General].

¹¹ See Commission on Peace Officer Standards and Training, Public Complaint Form, available at <https://post.ca.gov/public-complaint-form>.

civilian complaints anonymously.¹² As USDOJ has recognized, while requiring that the Baltimore Police Department accept anonymous complaints, “[a] well-functioning accountability system is one in which [among other factors, the Baltimore Police Department] openly and readily receives complaints reported by civilians and officers and fully, fairly, and efficiently investigates them. . . .”¹³

§ 943, subd. (d). This subdivision prohibits public complaint forms from containing any “language that could reasonably be construed as discouraging a complainant from submitting a Public Complaint or participating in any subsequent investigation.” The most notable example of such language is the advisory provided in Penal Code section 148.6.¹⁴

The USDOJ Office of Community Oriented Policing Services (“COPS”) has long recognized the importance of being as inclusive as possible during the intake process for public complaints,¹⁵ explaining:

“The public complaint process should not discourage, dishearten, or intimidate complainants or give them cause for fear. Unless required by law, a complaint need not be under oath or penalty of perjury. Unless required by law, no threats or warnings of

¹² See, e.g., Bakersfield Stipulated Judgment, *supra*, p. 28, para. 139, available at [https://oag.ca.gov/system/files/attachments/press-docs/Stipulation and Order.pdf](https://oag.ca.gov/system/files/attachments/press-docs/Stipulation%20and%20Order.pdf); First Quarterly Report of the Independent Monitor, *Delphine Allen et al., v. City of Oakland, et al.*, pp. 14-15, available at <https://oaklandca.s3.us-west-1.amazonaws.com/government/o/OPD/a/publicreports/dowd005015.pdf>, <https://www.oaklandca.gov/resources/opd-independent-monitoring-team-imt-monthly-reports-2#opd-semi-annual-annual-reports-2003-2015> [2003 settlement agreement required the City of Oakland to improve its procedures for receiving citizen complaints, including accepting anonymous complaints]; Baltimore Consent Decree, *supra*, para. 336, subd. (a), p.114, available at <https://www.justice.gov/opa/file/925056/dl> [“BPD will ensure individuals may make complaints in multiple ways, including in person or anonymously, by telephone, online, and through third parties to ensure broad and easy access to its complaint system . . .”]

¹³ Baltimore Consent Decree, *supra*, para. 329, p. 112, available at <https://www.justice.gov/opa/file/925056/dl>.

¹⁴ Existing law states that “[a] law enforcement agency accepting an allegation of misconduct against a peace officer shall require the complainant to read and sign” the advisory set forth in Penal Code section 148.6, which requires that such allegations be submitted in writing and that the complainant’s name be included. The advisory also states that it is against the law to make a complaint knowing it to be false and that a person who makes a false statement knowing it is false can be prosecuted on a misdemeanor charge. (Pen. Code, § 148.6, subd. (a)(2).)

¹⁵ COPS Report, *supra*, p. 13, available at <portal.cops.usdoj.gov/resourcecenter/content.ashx/cops-p164-pub.pdf> [“The widest possible net should be thrown open at intake to receive all complaints from all possible sources of complaint.”].

prosecution or potential prosecution for filing a false complaint should be made orally or in writing to a complainant or potential complainant.”¹⁶

The RIPA Board has similarly highlighted the unnecessary chilling effect that warnings, such as that set forth in Penal Code section 148.6, have on legitimate complaints.¹⁷ Given the nature of the complaints covered by AB 655, we anticipate that many witnesses to Covered Misconduct will already be fearful of reprisal from involved Peace Officers and therefore hesitant to make a complaint even in the absence of being warned of consequences for a misstatement, making the noted chilling effect even more consequential in this context. The Ninth Circuit and California Supreme Court have come to conflicting conclusions regarding whether Penal Code section 148.6 is constitutional,¹⁸ and, as the RIPA Board has noted, many California law enforcement agencies have removed the warning from their civilian complaint forms and accept anonymous complaints.¹⁹

By tasking the Department with the responsibility to promulgate guidelines for the investigations of complaints covered by AB 655, the Legislature has provided it with latitude to use its expertise in determining which related requirements in potentially analogous statutes should apply. Indeed, in the provision requiring investigations of alleged misconduct covered by AB 655, the Legislature expressly provided that those investigations shall be conducted “[n]otwithstanding Section 19635 of the Government Code, or any other law[.]” (Pen. Code, § 13682, subd. (a).)²⁰

Accordingly, taking into account both its own expertise and the considered recommendations of other experts, and noting the uniquely sensitive nature of the misconduct at issue and the likelihood of fearfulness on the part of potential complainants, the Department concludes that the use of discouraging language in complaint forms or law enforcement facilities would undermine

¹⁶ *Id.* at p. 17.

¹⁷ See 2023 RIPA Report Recommendations and Best Practices, p. 6, available at <https://oag.ca.gov/system/files/media/2023-ripa-report-best-practices.pdf>; 2022 RIPA Report Best Practices, p. 13, available at <https://oag.ca.gov/system/files/media/2022-ripa-report-best-practices.pdf>.

¹⁸ The California Supreme Court granted a petition for review to address the applicability of the Ninth Circuit’s holding in *Chaker v. Crogan* (9th Cir. 2005) 428 F.3d 1215, that the statute is unconstitutional, which directly conflicts with a recent decision of the Court of Appeal (*see Los Angeles Police Protective League v. City of Los Angeles* (2022) 78 Cal.App.5th 1081) and is in tension with much earlier California Supreme Court precedent (*see People v. Stanistreet* (2002) 29 Cal.4th 497). (*See Los Angeles Police Protective League v. City of Los Angeles*, 514 P.3d 892 (Cal. 2022).) Oral argument is anticipated to be imminent.

¹⁹ 2021 RIPA Report, p. 134, fn. 294, available at <https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/ripa-board-report-2021.pdf>.

²⁰ To the extent the Legislature has incorporated other existing laws to AB 655, it has done so expressly. (*See* Pen. Code, § 13680, subd. (h), referencing Government Code sections 3304 and 3304.5 with respect to any administrative appeals.)

the intent of the statute to create a robust system for identifying and addressing this serious misconduct. Accordingly, this provision prevents such interference.

§ 943, subd. (e). This provision requires that agencies’ policies regarding public complaint intake comply with applicable law concerning language access and disability accessibility.²¹ The RIPA Board acknowledged the importance of ensuring such access, and set forth recommendations in its 2023 RIPA Report and corresponding Recommendations and Best Practices, requiring, among other things, that complaint forms and instructions be provided in any language spoken by more than 5% of the jurisdiction’s population, as defined in the Dymally-Alatorre Bilingual Services Act.²² The Board further recommended that agencies “[m]ake complaint forms as accessible as possible, including for people with disabilities, by using additional methods such as formatting text flush left, using numbered lists instead of bullet points, and correcting formatting of electronic documents to make forms more accessible for assistive technology software/screen readers.”²³ As with the provisions above, ensuring persons with disabilities or who speak languages other than English can access and submit complaints is an integral component of an effective intake system.

§ 943, subd. (f). This provision requires agencies to have on their website a prominent link explaining the Public Complaint process, an ability to submit a complaint online (directly or by linking to the Investigating Agency’s site), and language that states that retaliation is prohibited. Information about the complaint process and the ability to submit complaints online are necessary to ensure that members of the public can easily access the complaint process. The requirement that the link be prominently displayed on a website’s home page, rather than buried in other web pages on the site, ensures that the complaint form is only one click away. This requirement that the home page contain a prominent link is similar to the requirements of the California Consumer Privacy Act of 2018, as amended, which requires that information regarding the use and disclosure of personal information be prominently posted on the home page of the business, and that there be a link to the business’ privacy policy prominently available on the business’ homepage.²⁴

Transparency about the complaint process is vital to the statute’s goal of rebuilding trust between law enforcement and the public, and to ensuring that the statute’s effectiveness is not stymied by complainants being unable to make a complaint. As the USDOJ COPS Office observed in its report on recommendations for receiving and investigating complaints:

²¹ Federal and state statutes providing protections for disability and language access in this context include the Dymally-Alatorre Bilingual Services Act, Gov. Code, § 7290 et seq. [ensuring language access]; Unruh Civil Rights Act, Civ. Code, § 51; Title II of the Americans with Disabilities Act of 1990, 42 USC § 12132 et seq.; Rehabilitation Act of 1973, 29 USC § 794(a) et seq.; and Gov. Code, § 11135.

²² See 2023 RIPA Report Recommendations and Best Practices, *supra*, p. 6, available at <https://oag.ca.gov/system/files/media/2023-ripa-report-best-practices.pdf>; 2023 RIPA Report, p. 180, available at <https://oag.ca.gov/system/files/media/ripa-board-report-2023.pdf>.

²³ 2023 RIPA Report Recommendations and Best Practices, *supra*, p. Report, p. 6.

²⁴ See Civ. Code, § 1798.135.

The complaint process from intake to final disposition should be clear to all involved, and should include at least a general description of the categories the agency uses to group complaints and the procedures for handling each category. The descriptions and procedures should be in writing and easily accessible to the public.²⁵

The provision requiring language that retaliation is prohibited is necessary to remove barriers persons may encounter when deciding whether to submit a complaint, including the threat of retaliation. Federal and state law prohibit retaliation against those who exercise their First Amendment rights or retaliation in violation of public policy.²⁶

§ 943, subd. (g). This provision requires that an agency that receives a Public Complaint shall, through a designated intake coordinator, log all Public Complaints within one business day of receiving such a complaint. The information to be included in the log includes date of receipt, name of the Subject of the complaint, and the complaint’s general subject matter. This provision is necessary to ensure that complaints are documented in an orderly and timely manner, even those that ultimately do not warrant further investigation. Such documentation will be critical for internal tracking purposes, which in turn will help ensure accountability. This log will also assist agencies in complying with their obligation to report citizen complaint disposition data to the Department. (*See* Pen. Code, § 13012, subd. (a)(5)(A).)

§ 943, subd. (h). This provision requires the intake coordinator designated by the Investigating Agency to refer the Public Complaint to the Investigative Unit within one business day of receiving the complaint. The referral will not require significant review, but rather only requires that complaints be logged appropriately and referred timely. This provision is necessary to ensure that complaints are referred timely and efficiently to the appropriate investigative unit. A timely referral ensures that the ten-day initial review set forth in Section 947, subd. (c) is not delayed; that ten-day initial review period aligns with requirements under Senate Bill (SB) 2. (Stats. 2021, c. 409 (S.B.2), § 12, eff. Jan. 1, 2022.).

§ 943, subd. (i). This provision clarifies that the intake coordinator should refer to the Investigating Unit any complaint about which they are unsure whether it is a Covered Complaint. This provision is necessary to ensure that all complaints that should be assessed by the Investigating Unit are properly referred.

§ 944. Internal Complaints.

§ 944, subd. (a). This provision requires each Employing Agency and each Investigating Agency to accept Internal Complaints from any personnel and refer such Internal Complaints to an appropriate investigator. These requirements are in addition to the logging of Public Complaints required by § 943 above. This is because the external complaint logging falls within the procedure required by Penal Code, § 832.5, which applies only to civilian complaints against

²⁵ Community Oriented Policing Services, U.S. Department of Justice, Standards and Guidelines for Internal Affairs: Recommendations from a Community of Practice (“COPS Report”) (2012), p. 14, available at <https://portal.cops.usdoj.gov/resourcecenter/RIC/Publications/cops-p164-pub.pdf>.

²⁶ *See e.g.*, 42 U.S.C. § 1983; Civ. Code, § 52.1.

personnel of law enforcement agencies. To the extent agencies already have in place procedures for accepting internal complaints, these procedures must comply with this provision.

§ 944, subd. (b). This provision requires each Employing Agency to accept anonymous Internal Complaints. It is necessary for the same reasons the provisions above require the acceptance of anonymous Public Complaints; namely, to ensure that internal complainants who may be fearful of retaliation can safely report allegations of Covered Misconduct, in furtherance of the Legislature’s intent to root out the extremist conduct addressed by AB 655. (*See* § 943, subd. (c), above.)

§ 944, subd. (c). This provision requires each Employing Agency to develop and implement a policy requiring all personnel who are aware that any Peace Officer has engaged in or has likely engaged in Covered Misconduct to make an Internal Complaint. This provision will prevent employees from turning a blind eye to Covered Misconduct by their co-workers.

Such policies are necessary to promote the integrity of law enforcement agencies and to strengthen community trust and are therefore relatively common in law enforcement. The Los Angeles County Inspector General has further recommended, in its review of the Los Angeles County Sheriff’s Department’s investigations of misconduct, that the Department “should, by policy, procedure and practice . . . [i]mpose a clear and unequivocal duty on **all** employees to report **all** violations of federal statute, state law, Charter of Los Angeles County, Los Angeles County Code, local ordinance, rules of the Department of Human Resources, lawful orders issued by a supervisor and any rules, regulations or policies of the County, including the Department.”²⁷

§ 944, subd. (d). This provision requires the implementation of a procedure for logging of internal complaints that complies with the requirements for logging of public complaints as provided in § 943, subd. (g), (h), (i). This provision is necessary to ensure that complaints are documented in an orderly manner, even those that ultimately do not warrant further investigation. Such documentation will be critical for internal tracking purposes, which in turn will help ensure accountability.

Section 945. Receipt of Complaints by Other Appropriate Oversight Agency.

§ 945, subd. (a). This provision addresses situations in which a member of the public submits a Covered Complaint to an Appropriate Oversight Agency in the same jurisdiction as the Subject’s Employing Agency, but oversight agency is not the Investigating Agency pursuant to Section 942. In those situations, the oversight agency is permitted to investigate the matter itself rather than refer it to the Investigating Agency if (1) the oversight agency has jurisdiction over the Employing Agency based on another source of law (such as a county ordinance creating an

²⁷ *See* Office of the Inspector General Report: Los Angeles Sheriff’s Department: Review and Analysis of Misconduct Investigations and Disciplinary Process, February 2021, p. 120 (emphasis in original), available at https://assets-us-01.kc-usercontent.com/0234f496-d2b7-00b6-17a4-b43e949b70a2/dddb2ccf-34af-4e30-b6a8-7e9d610265d0/IIPublicReport_Body2.pdf; *see also* Gov. Code, § 7286, subd. (b)(3) (mandating internal reporting of use of excessive force).

inspector general's office to oversee the Employing Agency) and (2) the oversight agency determines that disclosure to the Investigating Agency might compromise the investigation or put someone at risk. This provision allows for a complainant to make a complaint directly to the oversight agency where the complainant has concerns about retaliation, corruption, or other issues involving the agencies designated pursuant to Section 942, protecting the integrity and effectiveness of the AB 655 process. Because this provision applies to Appropriate Oversight Agencies with jurisdiction over the relevant Employing Agency, the oversight agency should generally be especially well positioned to identify concerns with that Employing Agency's designated Investigating Agency (which may be the Employing Agency itself).

§ 945, subd. (b). This provision authorizes an Appropriate Oversight Agency with jurisdiction over the Employing Agency of the subject at issue to keep the complaint confidential from the Employing Agency or other Investigating Agency where it determines that disclosing the Covered Complaint to the Employing Agency may compromise the investigation thereof or put any person at risk of harm. This provision is necessary to protect complainants, witnesses, or other persons who might be subjected to retaliation or other harm by an Employing Agency or Investigating Agency.

§ 945, subd. (c). This provision permits an Appropriate Oversight Agency investigating a Covered Complaint to also adjudicate the complaint or refer it to another Appropriate Oversight Agency for adjudication. This is necessary to protect the integrity of the adjudication process in situations in which the Adjudicating Agency designated pursuant to Section 942 may be compromised in its ability to fairly adjudicate the complaint. Because this provision applies to Appropriate Oversight Agencies with jurisdiction over the relevant Employing Agency, the oversight agency should generally be especially well positioned to identify concerns with that Employing Agency's designated Adjudicating Agency (which may be the Employing Agency itself).

§ 945, subd. (d). Because the statute's seven-year lookback period (*see* Pen. Code, § 13682, subd. (a)) ends on the date that any portion of a Covered Complaint reaches the Investigating Agency (*see* Section 947, subd. (d)(1)), this provision clarifies that an Appropriate Oversight Agency acting pursuant to Section 945, subd. (a), stands in the shoes of the Investigating Agency for purposes of calculating the seven-year time frame. This provision is necessary to clarify which conduct is subject to AB 655 in the absence of involvement by an Investigating Agency designated pursuant to Section 942.

§ 945, subd. (e). This provision requires that an Appropriate Oversight Agency, voluntarily acting as an Investigating Agency or Adjudicating Agency despite not having been designated as such pursuant to Section 942, be bound by Sections 947 through 951, 952, subd. (a), and 953, subd. (b). These regulations address investigations, adjudication, maintenance of case records, and compliance with DOJ inspections of records. An Appropriate Oversight Agency acting pursuant to this section is not required to comply with regulations requiring promulgation and publicization of policies, regular audits, or training. This provision is necessary to ensure that all investigations and adjudications benefit from these regulations, and to prevent complaint to a non-designated Appropriate Oversight Agency from being a potential loophole in application of these regulations.

§ 945, subd. (f). Similar to Section 942, subd. (d), this provision clarifies that the governmental entities with lawmaking authority over the Appropriate Oversight Agency have the power to dictate the scope of its authority with respect to the implementation of this Section. It further clarifies that such responsibility is not subject to collective bargaining or private agreement. This provision is necessary to clarify that the statute and regulations do not permit an Appropriate Oversight Agency to act contrary to government oversight and control.

§ 946. Receipt of Complaints by Agencies Outside Agency’s Jurisdiction.

§ 946. This provision provides that, if any Employing Agency or other agency designated as an Investigating Agency pursuant to § 942, receives a Covered Complaint involving a Subject outside of its jurisdiction, the agency must accept the complaint pursuant to its procedures and § 943, and within three days transmit all documentation related to the appropriate Investigating Agency.

This is necessary because sometimes a complainant may not be able to identify the Investigating Agency with jurisdiction over the subject. Requiring the Employing Agency or Investigating Agency receiving a Covered Complaint to forward it to the appropriate agency ensures the complaint will be appropriately handled without delay. At the same time, this provision seeks to limit the burden on agencies by applying only to agencies that are already required, under AB 655 and these regulations, to adopt procedures for the acceptance and logging of AB 655 complaints.

§ 947. Investigations.

§ 947, subd. (a). To promote effective investigations and community trust regarding the investigatory process, this provision establishes the minimum criteria for those assigned to investigate AB 655 complaints. Agencies have discretion to require additional criteria they deem appropriate. Under this provision, investigators, at a minimum must hold a higher rank than the subject of the investigation, shall not be the Subject’s immediate supervisor (unless the subject’s immediate supervisor is the highest-ranking member of the subject’s chain of command), shall not have any actual or perceived conflicts of interest, and shall be supervised in accordance with agency policy. Each of these criteria will promote the investigator’s independence and objectiveness as well as public confidence.²⁸

§ 947, subd. (b). This provision addresses potential circumstances in which it is impossible or impracticable for an Investigating Agency to conduct an AB 655 investigation. In those circumstances, the regulation requires the Investigating Agency to refer the investigation to the alternate Investigating Agency identified pursuant to § 942, subd. (c). If such a referral is impossible, the Investigating Agency may ask the Department to accept the matter for

²⁸See, e.g., 2019 RIPA Report, *supra*, p. 70 [recommends best practice of having investigation completed by someone of higher rank than person who is subject of investigation], available at <https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/ripa-board-report-2019.pdf>; see also Baltimore Consent Decree, *supra*, pp. 130-131, para 356 [discussing negative impact of actual bias or appearance of bias on legitimacy of internal investigations], available at <https://www.justice.gov/opa/file/925056/dl>.

investigation by explaining why the Investigating Agency and alternate Investigating Agency are unable to conduct the investigation. While the referral is pending with the Department, the time limit specified in Section 947, subd. (i), is tolled. If it accepts the referral, the Department has discretion in how to handle it, including by referral to another agency. If the Department rejects the referral or does not respond within 30 days, the Investigating Agency retains responsibility for the investigation. To alleviate the issues leading to the initial referral, the Investigating Agency is permitted to refer the matter to an Appropriate Oversight Agency not designated pursuant to Section 942, and the Investigating Agency must take all reasonable measures to mitigate conflicts of interest or undue pressure on personnel involved with the investigation. This provision is necessary to ensure that the investigation can be conducted even in circumstances where there are conflicts of interest, extraordinary circumstances, or unforeseen reasons.

§ 947, subd. (c). AB 655 requires complaints to allege with “sufficient particularity” that an officer has engaged in Covered Misconduct. (Pen. Code, § 13682, subd. (a).) This and the following proposed provision provide the process by which the assigned investigator must assess if these thresholds have been met, as well as provides a ten-day time frame in which to make that assessment, unless an exception applies. The ten-day period for this initial assessment aligns with Senate Bill (SB) 2’s reporting requirements, which established a certification and decertification program for certain peace officers. (Stats. 2021, c. 409 (S.B.2), § 12, eff. Jan. 1, 2022.). This will help ensure a seamless process for law enforcement agencies and POST.²⁹

This provision also explains that some potential circumstances, such as failing to allege the name of the hate group involved, are insufficient, by themselves, to decline to initiate an investigation. This ensures that serious misconduct by law enforcement officers is not unnecessarily

²⁹ See Pen. Code, § 13510.9, subd. (a)(2) [requiring law enforcement agencies to report to POST within 10 days any “complaint, charge, or allegation of conduct against a peace officer employed by that agency that could render a peace officer subject to suspension or revocation of certification by the commission pursuant to Section 13510.8.”]; Pen. Code, § 13510.8, subd. (b) [requiring the Commission to adopt, by regulation, a definition of “serious misconduct” that shall serve as criteria for determining ineligibility for, or revocation of, certification]; Cal. Code Regs., tit. 11, § 1205, subd. (a)(5) [“serious misconduct” includes “[d]emonstrating 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.”]. Recent amendments to this definition of “serious misconduct” add examples for what constitutes “‘demonstrating’ bias for purposes of” the regulation, which includes when an 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(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.” (*Ibid.*, as amended and effective April 18, 2024, available at https://post.ca.gov/Portals/0/post_docs/regulationnotices/2023/2023-70_Notice_of_Approval.pdf.)

overlooked so that the Legislature’s intent is fully realized. The provision provides a commonsense framework to initially assess complaints, including “the existence within a complaint of any detail that indicates further investigative activities may be reasonably calculated to prove or disprove any material allegation in that complaint.” (*See* proposed definition of “Sufficient Particularity to Investigate,” *supra*.)

§ 947, subd. (d). This provision requires investigators to assess whether the alleged misconduct took place within seven years of the making of the complaint or when the officer was at least 18 years of age, both threshold criteria under AB 655. Because there may be some question over when a complaint has been made, particularly if it must be referred to the Investigating Agency by a separate agency, this provision clarifies that the relevant event is the initial effort by the complainant to communicate any portion of the underlying allegations to any government agency – thereby ensuring that any difficulties in routing a complaint to the correct agency do not have the effect of undermining the complaint itself. This provision explains that the threshold criteria is met if, at a minimum, the nature of the alleged misconduct is such that further investigation is warranted regarding when the alleged misconduct took place or the age of the officer at the relevant time.

§ 947, subd. (e). This provision requires investigators to engage in reasonable follow-up with complainants, or to undertake other preliminary investigative steps, if necessary to ascertain whether Sufficient Particularity to Investigate exists. This provision also provides for an extension of the ten-day assessment period set forth in subdivision (c), *supra*, to allow for this follow-up with complainants or other identified witnesses, or for other necessary preliminary investigation. This provision will ensure that warranted investigations are not dismissed due to potential incomplete communications with complainants, where such misunderstandings or gaps in information may be resolved with due inquiry.

§ 947, subd. (f). This provision sets forth the process the investigator must follow if they determine that a complaint does not provide Sufficient Particularity to Investigate because the threshold criteria set forth above are not met. To ensure consistency and integrity in the process, the provision requires supervisory review before closure of the matter. In addition, the Investigating Agency shall maintain documentation, including all evidence obtained by the investigator, the investigatory steps taken, and the investigator’s conclusions and reasoning. This provision is necessary to prevent matters from being improperly dismissed and to permit audits of determinations not to investigate complaints.

§ 947, subd. (g). This provision requires that the assessment and investigation of a complaint not be terminated for the sole reason that the complainant has withdrawn the complaint; the Subject quits, retires, or is terminated; or the subject voluntarily or involuntarily moves to a non-peace officer role within the Employing Agency. This is necessary to avoid situations in which a complaint is ignored because the complainant is pressured by the agency or involved parties to withdraw their complaint, or because the Subject is no longer with the Employing Agency but could still seek future employment as a peace officer or has obtained such employment elsewhere.

§ 947, subd. (h). AB 655 provides that complaints alleging with sufficient particularity that an officer has engaged in Covered Misconduct must be investigated, “[n]otwithstanding Section

19635 of the Government Code, or any other law.”³⁰ This provision underscores and clarifies that any other statute of limitations set forth in any other state or local law, regulation, or memorandum of understanding that would otherwise bar the investigation is not applicable.³¹ This provision further provides that investigations shall commence immediately to ensure a timely process.

§ 947, subd. (i). This provision requires the investigation to be completed no later than six months after the investigation commences, and provides an exception for extensions of time where there are case-specific needs or where the Adjudicating Agency has returned the case for further investigation. Policies providing for set investigatory timelines that balance the need for thoroughness, concerns about loss of evidence due to the passage of time, and public trust in the system have long been determined to be a best practice.³²

Currently, law enforcement agencies employ a wide variety of policies regarding the time period in which police misconduct investigations must be completed. Because this regulation will govern a relatively narrow, but serious, subset of peace officer misconduct, the Department has determined that a consistent six-month period is reasonable and aligns with best practices, taking into account the potential complexity of an AB 655 investigation.³³ This provision is also necessary to underscore that any time limitations that may apply to other types of internal or

³⁰ Pen. Code, § 13682, subd. (a).

³¹ Compare, e.g., Gov. Code, § 19635 [“No adverse action shall be valid against any state employee for any cause for discipline based on any civil service law of this state, unless notice of the adverse action is served within three years after the cause for discipline, upon which the notice is based, first arose. . . .”] with Cal. Code Regs., tit. 15, § 3417 [setting forth procedure for non-inmate civilians to submit complaints against correctional officers, stating that “[c]itizen’s complaints alleging misconduct of a departmental peace officer shall be filed within twelve months of the alleged misconduct.”].

³² See, e.g., 2019 RIPA Report, *supra*, pp. 43-44, available at <https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/ripa-board-report-2019.pdf>; 2019 RIPA Report Best Practices, *supra*, p. 8, available at <https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/ripa-best-practices-2019.pdf>.

³³ See, e.g., Baltimore Consent Decree, *supra*, p. 122, para 344, subd. (i), available at [https://www.baltimorepolice.org/sites/default/files/General Website PDFs/Baltimore Police Consent Decree 3.pdf](https://www.baltimorepolice.org/sites/default/files/General%20Website%20PDFs/Baltimore_Police_Consent_Decree_3.pdf) [requiring administrative investigations to be completed within 90 days of their initiation, and requiring any request for an extension of time to be approved in writing by Director of the Office of Professional Responsibility]; “Investigation of Allegations of Employee Misconduct,” International Association of Chiefs of Police (IACP), Law Enforcement Policy Center (2019), p. 10, available at <https://www.theiacp.org/sites/default/files/2020-08/Investigation%20of%20Allegations%20of%20Employee%20Misconduct%20-%20FULL.pdf> [“Whenever possible, the investigation of a complaint should be completed within a reasonable period of time. A period of 45 days from the time of the initial receipt of the complaint to its disposition would be considered reasonable under most circumstances unless a waiver is granted by the chief executive or their designee.”].

public complaints, such as that set forth in Government Code section 3304,³⁴ do not apply to AB 655 investigations, and that length of investigation cannot be considered a mitigating factor in adjudication (as AB 655 does not recognize any mitigating procedural factors or circumstances under which a consequence short of removal from appointment as a peace officer may be considered where a complaint is sustained). AB 655 only incorporates, for example, Government Code sections 3304 and 3304.5 in its provisions regarding administrative appeals and requires the Department to promulgate guidelines for the “investigation and adjudication of complaints.”³⁵ All other statutes, collective bargaining agreements, and policies that are contrary to the aims of AB 655 in a manner elaborated in these regulations, are understood to not apply. (See Pen. Code, § 13682, subd. (a) (“[n]otwithstanding Section 19635 of the Government Code, or any other law. . .”).)

§ 947, subd. (j). This provision requires the investigator to identify, collect, and consider all relevant evidence. This ensures certain minimum best practices regarding the collection of evidence to support the integrity of the investigation, including where investigations rely on social media content.³⁶

§ 947, subd. (k). This provision requires investigators to take all reasonable steps to locate and interview all witnesses, including civilian witnesses. Interviews shall be videorecorded or audiorecorded. This ensures certain minimum best practices regarding locating and interviewing witnesses, including the need to maintain recordings that are more accurate than transcripts and better support credibility determinations.³⁷

§ 947, subd. (l). This provision states that certain aspects of the investigation are not constrained by statute, regulation, policy, contract, or general directive; these aspects include the length of notice provided regarding an upcoming interview or interrogation, the duration of the interview

³⁴Government Code section 3304, subdivision (d)(1) provides in relevant part: “Except as provided in this subdivision and subdivision (g), 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. . . .”

³⁵See Gov. Code, §§ 13680, subd. (h); 13682, subd. (c).

³⁶See RIPA 2019 Annual Report, *supra*, p. 70, available at <https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/ripa-board-report-2019.pdf>; see also *Law Enforcement Departments Have Not Adequately Guarded Against Biased Conduct*, Auditor of the State of California (2022) pp. 10, 42-44, available at <https://information.auditor.ca.gov/pdfs/reports/2021-105.pdf> [highlighting importance of consistent level of investigatory depth and consideration of social media content.].

³⁷See RIPA 2019 Annual Report, *supra*, pp. 70-71, available at <https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/ripa-board-report-2019.pdf>; Baltimore Consent Decree, *supra*, p. 121, para 344, subd. (c), available at https://www.baltimorepolice.org/sites/default/files/General_Website_PDFs/Baltimore_Police_Consent_Decree_3.pdf [requirements regarding locating and interviewing witnesses].

or interrogation, the number of participants, the power to develop reasonable protocols to avoid or minimize obstruction by limiting a subject or witness's representative from participating in an interview or investigation, and whether the subject or witness can be provided with evidence regarding the investigation prior to its conclusion. It also gives the investigator or finder of fact discretion to draw a negative inference if the subject refuses to answer questions or provide any other evidence requested.

These provisions are necessary because researchers have identified certain practices incorporated in statutes, ordinances or collective bargaining agreements that can unnecessarily undermine police misconduct investigations. This includes blanket requirements regarding the length of notice provided the subject or witness of an upcoming interview, the duration and number of participants in an interview, and the timing of when the subject of the investigation is provided evidence.³⁸ The specific circumstances in which the regulations restore discretion to investigators are of particular importance to the substance of the investigations contemplated by AB 655. For example, the need to include in an interrogation additional questioners with expertise in hate groups is likely to arise in AB 655 investigations at a much higher frequency than in administrative investigations overall. Likewise, an AB 655 investigation may involve a law enforcement gang or other coordinated activity between peace officers; under such circumstances, an investigator's concerns about peace officer subjects communicating to "get their stories straight" can be addressed by not requiring the investigator to give subjects lengthy advance notice before interrogation or to provide subjects with interview transcripts or recordings while the investigation is ongoing.

These provisions are necessary to ensure that investigating agencies are not bound or restricted by those practices and have the discretion to make judgments about those matters on a case-by-case basis to allow them to conduct effective investigations. Without impeding any due process rights or rights to counsel that may be applicable, the provision ensures that the Investigating Agencies have the authority to develop reasonable protocols to avoid or limit inappropriate and obstructive conduct during the investigations.³⁹

§ 947, subd. (m). This provision provides agencies with flexibility, on a case-by-case basis, regarding the timing and sequence of administrative and criminal investigations when a complaint warrants both types of investigations. Although the practice of conducting separate and consecutive investigations had been accepted in the past by some agencies, that practice is now generally disfavored by law enforcement experts. Chief among the concerns regarding consecutive, as opposed to parallel investigations, is the deprivation of "crucial and timely

³⁸See RIPA 2024 Annual Report at pp. 174-175, citing Rushin and DeProspo, *Interrogating Police Officers* (2019) 87 Geo. Wash. L.Rev. 646, available at <https://oag.ca.gov/system/files/media/ripa-board-report-2024.pdf>.

³⁹See Office of the Inspector General Report: *Los Angeles Sheriff's Department: Review and Analysis of Misconduct Investigations and Disciplinary Process, February 2021*, pp. 45-52, available at https://assets-us-01.kc-usercontent.com/0234f496-d2b7-00b6-17a4-b43e949b70a2/dddb2ccf-34af-4e30-b6a8-7e9d610265d0/IIPublicReport_Body2.pdf.

information which might be lost with the passage of time.”⁴⁰ By providing flexibility to law enforcement agencies, they can make determinations that will best ensure effective investigations given the totality of the circumstances.

Finally, this provision recognizes a tolling period of the six-month investigatory deadline when an agency pauses an administrative investigation due to a related criminal investigation. The Legislature has provided similar tolling in analogous circumstances in relation to other types of public complaints involving law enforcement.⁴¹

§ 947, subd. (n). This provision establishes criteria necessary to ensure sufficient evidence has been gathered to support investigative Findings prior to the conclusion of the investigation, or that the investigation has conclusively established that any element of the Covered Misconduct at issue cannot be established. The establishment of Findings of fact is critical for objective resolutions of complaints.

§ 947, subd. (o). This provision requires the investigator to compile an investigative file. This ensures best practices are followed with respect to the documentation of the investigation. Such documentation allows the Adjudicating Agency to effectively review the investigation for thoroughness and assess Findings of fact before they make determinations on the complaint.⁴²

§ 947, subd. (p). This provision clarifies that the Investigating Agency or unit must transmit the investigative file to the Adjudicating Agency or unit. This requirement is consistent with the AB 655’s provision that complaints must be investigated and adjudicated. (*See* Pen. Code, § 13682, subd. (c).)

Article 3. Adjudication

§ 948. Adjudication.

§ 948, subd. (a). This provision explains that adjudication commences when the Adjudicating Agency receives the investigator’s Findings. This provision is necessary to provide context generally for the other provisions in this section.

⁴⁰2021 OIG Report, *supra*, pp. 52-53, available at https://assets-us-01.kc-usercontent.com/0234f496-d2b7-00b6-17a4-b43e949b70a2/dddb2ccf-34af-4e30-b6a8-7e9d610265d0/IIPublicReport_Body2.pdf.

⁴¹*See* Gov. Code, § 3304, subd. (d)(2)(A).

⁴²*See, e.g., Law Enforcement Departments Have Not Adequately Guarded Against Biased Conduct*, Auditor of the State of California (2022), p. 10 [recognizing that several law enforcement policies they reviewed “should require that investigations include a formal determination that makes clear whether biased conduct occurred or not, as well as the rationale for reaching the determination”], available at <https://information.auditor.ca.gov/pdfs/reports/2021-105.pdf>; Baltimore Consent Decree, *supra*, pp. 126-127, para 351 [components of required investigation reports], available at https://www.baltimorepolice.org/sites/default/files/General_Website_PDFs/Baltimore_Police_Consent_Decree_3.pdf.

§ 948, subd. (b). This provision is intended to clarify the relationship between the investigation and adjudication phases. Specifically, this section permits the Adjudicating Agency to return a case to the investigator for further investigation. This provision is necessary to avoid a situation in which agencies incorrectly assume that a case cannot be returned for further investigation, or implement policies explicitly or inadvertently prohibiting such action. Failure to return an incomplete investigation for further development would prevent the effective implementation of the statute by creating a strong likelihood that Covered Misconduct would not be established at the adjudication phase, and the peace officer who engaged in such misconduct would not be removed from appointment as a peace officer, as required by the statute.

§ 948, subd. (c). This provision requires the Adjudicating Agency to directly respond to each Finding resulting from the underlying investigation and provide its determination in writing. This is necessary to ensure that attention is given to each element of the investigator's Findings. The provision prevents a situation in which the Adjudicating Agency inadvertently or willfully overlooks misconduct and supporting evidence identified by the investigator.

§ 948, subd. (d). Similar to subdivision (c), this provision ensures that the Adjudicating Agency considers all findings identified by the investigator, even if those findings are based on evidence uncovered during the investigation and not on the allegations of an initial complaint. The provision is necessary to prevent a situation in which the Adjudicating Agency inadvertently or willfully overlooks misconduct and supporting evidence identified by the investigator.

§ 948, subd. (e). This provision states that the Adjudicating Agency's determination is subject to the notice and pre-removal procedures required under state and local law, including Government Code section 19574 and the opportunity for an administrative appeal provided in Government Code sections 3304 and 3304.5. The regulation repeats AB 655's provision regarding the right to administrative appeal, found in the statute's definition of "sustained" to mean a final determination by the investigating agency following an investigation or, if adverse action is taken, a final determination after the opportunity for administrative appeal. (*See Pen. Code, § 13680, subd. (h).*)

Including these statutory requirements in the regulations is necessary for clarity, and to provide agencies, officers, and the public with a single source of information for AB 655 investigations.

§ 948, subd. (f). This provision repeats the provision of the underlying statute concerning the requirement that a sustained finding of Covered Misconduct results in removal from appointment as a Peace Officer. (*See Pen. Code, § 13682, subd. (b).*) Including this statutory requirement in the regulations is necessary for clarity, and to provide agencies, officers, and the public with a single source of information for AB 655 investigations.

§ 948, subd. (g). This provision clarifies that AB 655 does not supplant other law or policies that may require discipline beyond removal from appointment as a Peace Officer. This provision is necessary to ensure that Adjudicating Agencies recognize that they retain discretion in disciplining Peace Officers for Covered Misconduct, so long as they remove from appointment a subject who has been found to have engaged in Covered Misconduct.

§ 949. Elements of Covered Misconduct.

The purpose of this section is to break down each offense of Covered Misconduct into discrete elements. This is necessary to ensure consistent adjudication among agencies and to address any lack of certainty concerning which facts must be established to sustain allegations of Covered Misconduct. This section is not intended to substantively elaborate on the statutory definitions apart from necessary clarifications:

§ 949, subd. (a). Membership in a Hate Group (offense defined at Section 13680, subd. (d))

- (1) This provision incorporates the age and time period requirements from Section 13682, subd. (a), and the definitional element of “being, or holding oneself out as, a member” from the definition of “membership in a hate group” at Section 13680, subd. (d).
- (2) This provision reflects the requirements of the definitions of “hate group” and “membership in a hate group” at Section 13680, subdivisions (c), (d).
- (3) This provision clarifies the definition of “hate group” as “an organization that supports, advocates for, threatens, or practices genocide or the commission of hate crimes” (Pen. Code, § 13680, subd. (c)) by specifying that support, advocacy, threat, or practice may be attributed to the organization when it is attributable to a majority of organization members or to organization leadership.
- (4) This provision clarifies the intent requirement of Section 13680, subdivision (d) (“intent to further the unlawful aims of the group”) by specifying that the Subject must intend to support the specific unlawful aims listed in Section 13680, subdivision (c) (defining “hate group”) and that such support may be offered to any members of the organization.

Each element must be proven by a preponderance of the evidence, which is the common standard for civil liability and generally the standard employed in administrative proceedings involving peace officer misconduct.⁴³

§ 949, subd. (b). Participation in Hate Group Activity (offense defined at Section 13680, subd. (e))

- (1) This provision clarifies that the requisite relationship between the subject and hate group at issue (*see* Pen. Code, § 13680, subd. (e)) is satisfied by a relationship between the Subject and at least one group member.
- (2) This provision reflects the requirements of the definition of “participation in hate group activity” at Section 13680, subd. (e).
- (3) This provision incorporates the time period requirements from Section 13682, subd. (a), and the requirements of the definition of “participation in hate group activity” at Section 13680, subd. (e).
- (4) This provision incorporates the age requirements from Section 13682, subd. (a), and the requirements of the definition of “participation in hate group activity” at Section 13680,

⁴³ See, e.g., POST, Specialized Investigators’ Basic Course Workbook Series Student Materials, Learning Domain 61, Administrative Procedures (Version 2.1), p. 3-5, available at https://post.ca.gov/portals/0/post_docs/basic_course_resources/workbooks/LD_61_V-2.1.pdf; COPS Report, *supra*, pp. 23, 50, 52, available at <https://portal.cops.usdoj.gov/resourcecenter/content.ashx/cops-p164-pub.pdf>.

subd. (e). The provision further clarifies that an attempted hate crime constitutes a hate crime for purposes of Section 13680, subd. (e).⁴⁴

§ 949, subd. (c). Public Expression of Hate (offense defined at Section 13680, subd. (g))

- (1) This provision incorporates the time period requirements from Section 13682, subd. (a), and the requirements of the definition of “public expression of hate” at Section 13680, subd. (g).
- (2) This provision clarifies the various forms of “statement or expression” that satisfy the requirements of this offense, consistent with the intent of the statute to be sufficiently broad to reach online posting. (*See* Pen. Code, § 13680, subd. (g).) Specifically, this provision clarifies that both written and verbal statements or expressions are covered, and that the online post requirement of being “accessible to another person” (*see* Pen. Code, § 13680, subd. (g)) is satisfied by accessibility to a single other person.
- (3) This provision incorporates requirements of the definition of “public expression of hate” at Section 13680, subd. (g). The provision also adds a knowledge requirement to the clause regarding support for hate groups, which will avoid circumstances where a Subject expresses support for an organization without recognizing that the organization is a hate group, raising concerns about fairness and due process.

§ 950. Other Misconduct.

§ 950, subd. (a). Given the nature of the misconduct covered by AB 655, there is a strong likelihood that an administrative investigation into Covered Misconduct will implicate additional policy violations, such as those prohibiting unprofessional conduct, improper use of force, or discriminatory behavior. Provision (a) clarifies that an investigation conducted pursuant to AB 655 may incorporate investigations of related misconduct. This provision is necessary to avoid confusion about the requirements for AB 655 investigations, and to promote efficiency and flexibility in agencies’ investigations.

§ 950, subd. (b). Provision (b) prohibits an agency from negotiating less severe discipline when the agency has evidence to sustain a charge of Covered Misconduct, which would ultimately require removal of the Subject from appointment as a Peace Officer (*see* Pen. Code, § 13682, subd. (b)). The practice and abuse of such negotiated settlements, resulting in a lack of accountability for serious misconduct, is well documented, and this provision seeks to curtail their use.⁴⁵

⁴⁴*See* Pen. Code, § 664 [defining attempt as a crime]; Pen. Code, § 422.55 [defining “hate crime” to include any crime committed due to certain actual or perceived characteristics of the victim].

⁴⁵*See* 2021 OIG Report, *supra*, pp. 107-115 [*see, e.g.*, p. 109 [describing the numerous settlements in which the Los Angeles County Sheriff’s Department reversed its prior decisions to discharge deputies, including 66 cases in which the Department reversed its decision to terminate the deputy; the OIG described the terms of some of these agreements as appearing to be “unlawful and therefore unenforceable”], available at https://assets-us-01.kc-usercontent.com/0234f496-d2b7-00b6-17a4-b43e949b70a2/dddb2ccf-34af-4e30-b6a8-7e9d610265d0/IIPublicReport_Body2.pdf].

This provision is necessary to effectuate the statute’s intent that any peace officer against whom a Covered Complaint is sustained be “remove[d] from appointment as a peace officer,” with no provision for alternate discipline. (*See* Pen. Code, § 13682, subd. (b).)

§ 951. Serious Misconduct.

§ 951, subd. (a). This provision states that Covered Misconduct that takes place during a peace officer’s tenure with any Employing Agency and after January 1, 2023, constitutes “serious misconduct” within the meaning of Senate Bill 2 (2021) (SB 2), which created the category of “serious misconduct” (*see* Pen. Code, § 13510.8, subd. (b)) and required POST to define this term.⁴⁶ “Serious misconduct,” as further defined by POST regulation, “serve[s] as the criteria to be considered for ineligibility for, or revocation of, certification” (*id.*), and includes, among others, the following misconduct:

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, but not limited to, 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.

...

Demonstrating bias on the basis of 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. This paragraph does not limit an employee's rights under the First Amendment to the United States Constitution.⁴⁷

POST’s regulation defining “serious misconduct” mirrors this definition.⁴⁸ Recent amendments to this definition of “serious misconduct” add examples for what constitutes “demonstrating

⁴⁶ Pen. Code, § 13510.8, subd. (b) [requiring the Commission to adopt, by regulation, a definition of “serious misconduct” that shall serve as criteria for determining ineligibility for, or revocation of, certification]. Cal. Code Regs., tit. 11, § 1205, subd. (a)(5) [“serious misconduct” includes “[d]emonstrating 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”].

⁴⁷ Pen. Code, § 13510.8, subs. (b)(1), (b)(5).

⁴⁸ Cal. Code Regs., tit. 11, § 1205, subd. (a)(5) [“serious misconduct” includes “[d]emonstrating 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.”].

bias for purposes of” the regulation, which includes when an 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(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.”⁴⁹

The categories of misconduct covered by AB 655—membership in a hate group, participation in any hate group activity, and public expressions of hate—are all defined in AB 655 to incorporate an element of bias against protected statuses. (*See* Pen. Code, § 13680, subs. (d), (e), (g).) Moreover, because AB 655 is binding on “any public agency that employs peace officers” (Pen. Code § 13682, subd. (a)), any instance of Covered Misconduct will be, as a matter of law, “in violation of law or department policy” (Pen. Code § 13510.8, subd. (b)(5)). Accordingly, all instances of Covered Misconduct under AB 655 will be subsumed within the category “serious misconduct” for “[d]emonstrating bias” under SB 2. (Pen. Code, § 13510.8, subd. (b)(5).)

The provision further states that the reporting provisions of Penal Code section 13510.9 regarding “serious misconduct” apply to allegations or findings of Covered Misconduct.

§ 951, subd. (b). Beginning no later than January 1, 2023, any agency in compliance with Penal Code section 13681 would have inquired into past instances of Covered Misconduct. More specifically, peace officer applicants must complete a background check, including a personal history statement. (Cal. Code Regs., tit.11, § 1953, subd. (c).) As of July 1, 2024, the personal history statement must be completed on POST Form 2-251, which includes the following questions and instruction:

97. Do you have, or have you ever had, a tattoo signifying membership in, or affiliation with, a criminal enterprise, street gang, law enforcement gang, or any other group that advocates discrimination, genocide, or violence against individuals because of their race, religion, political affiliation, ethnic origin, nationality, gender, sexual orientation, or disability?

98. Are you now, or have you ever been, a member or associate of a criminal enterprise, street gang, law enforcement gang, hate group, or any other group that advocates discrimination, genocide, or violence against individuals because of their race, religion, political affiliation, ethnic origin, nationality, gender, sexual orientation, or disability?

99. Are you or have you ever engaged in membership in a hate group, participation in any hate group activity, or advocacy of public expressions of hate, as defined in Section 13680 of the Penal Code?

⁴⁹*Ibid.*, as amended and effective April 18, 2024, available at https://post.ca.gov/Portals/0/post_docs/regulationnotices/2023/2023-70_Notice_of_Approval.pdf.

100. Have you ever made postings, statements or endorsements advocating discrimination, genocide, or violence against individuals because of their real or perceived race or ethnicity, gender, nationality, religion, disability, or sexual orientation?

101. Have you ever expressed or exhibited bias against individuals because of their real or perceived race or ethnicity, gender, nationality, religion, disability, or sexual orientation?

If you answered “YES” to any of Questions 94–101, give details including dates and circumstances. . . .⁵⁰

If a peace officer candidate had engaged in any Covered Misconduct, within seven years of completing POST Form 2-251 and since reaching the age of 18, the peace officer candidate would be required to disclose such activities at least once on POST Form 2-251. Failure to disclose such conduct in response to any pre-employment inquiry amounts to “fraud or misrepresentation made by an applicant at any time during the application process that resulted in the issuance of the certification.” (Pen. Code, § 13510.8, subd. (a)(3).)

The proposed regulation clarifies that any false statement or omission in response to any pre-employment inquiry about Covered Misconduct is grounds for decertification and must be reported to POST. The provision’s requirement that the agency inquire about misconduct covered by AB 655 protects a peace officer applicant who failed to make appropriate disclosures but where this failure was possibly due to the agency’s own failure to make the inquiries required by AB 655.

The provision is necessary to address the likelihood of confusion caused by the fact that AB 655 was enacted shortly after SB 2, covering broadly overlapping misconduct, but without reference in either statute to its interaction with the other. By implementing this provision, covered agencies will be on notice of the need to develop policies that integrate implementation of AB 655 and SB 2.

Article 4. General Provisions

§ 952. Recordkeeping, Transparency, and Best Practices.

§ 952, subd. (a). Currently, with respect to civilian complaints generally, state law provides that “any reports or findings relating to these complaints, including all complaints and any reports currently in the possession of the department or agency, shall be retained for a period of no less than 5 years for records where there was not a sustained finding of misconduct and for not less than 15 years where there was a sustained finding of misconduct.” (Pen. Code, § 832.5, subd. (b).) This provision adopts this same retention period for complaints governed by AB 655, as well as for all related materials. This provision also mirrors Section 832.5, subdivision (b)’s requirement that a “record shall not be destroyed while a request related to that record is being processed or any process or litigation to determine whether the record is subject to release or

⁵⁰ https://post.ca.gov/portals/0/post_docs/publications/2-251-phsPeaceOfficers.pdf

retention is ongoing,”⁵¹ and provides agencies with discretion as to where the files shall be retained. Establishing retention requirements is necessary to promote both accountability and transparency regarding agencies’ handling of AB 655 complaints and, by incorporating currently established retention requirements for civilian complaints to public and internal complaints covered by AB 655, this provision provides consistency and ease for agencies.

§ 952, subd. (b). This provision requires Employing Agencies and other Investigating Agencies to make all policies required to be developed under these regulations available to the public, including prominently displaying the policies on the agencies’ home web pages. This transparency requirement is necessary to carry out AB 655’s goal of increasing public trust in law enforcement. Indeed, the California Legislature has long recognized the importance of ensuring the public has access to such information with respect to the submission and handling of complaints involving peace officers.⁵²

§ 952, subd. (c). AB 655 investigations require agencies to consider a myriad of issues, in addition to those addressed by these regulations, some of which may be unique to their agencies given their particular characteristics, such as agency size and resources. Accordingly, to ensure effective and thorough investigations while also providing appropriate flexibility to agencies, this provision requires agencies to adopt best practices for AB 655 investigations, and to conduct their investigations accordingly. This provision provides agencies with six months to develop these best practices, so as to provide agencies with sufficient time to fully consider the best practices they develop as they refine their AB 655 investigations. This six-month period, however, will not delay any investigations, as AB 655’s terms are currently operative.

§ 952, subd. (d). For the avoidance of any doubt, this provision specifies that existing privacy laws continue to apply to investigations under AB 655.

§ 953. Audits.

§ 953, subd. (a). To ensure all AB 655 complaints are being properly reviewed and investigated, this provision requires Investigating Agencies to conduct quarterly internal audits of all Covered Complaints that they determined did not warrant investigations, an assessment that is addressed in § 947, subd. (f). Such audits are consistent with best practices.⁵³ Under this provision, the

⁵¹ Pen. Code, § 832.5, subd. (b).

⁵² See Pen. Code, § 832.5, subd. (a)(1) [“Each department or agency in this state that employs peace officers shall establish a procedure to investigate complaints by members of the public against the personnel of these departments or agencies, and shall make a written description of the procedure available to the public.”]; see also 2020 RIPA Report, *supra*, p. 71, available at <https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/ripa-board-report-2020.pdf> [outlining possible barriers to filing public complaints, including lack of access to forms and complaint process].

⁵³ See COPS Report, *supra*, p. 18 [“**Auditing complaint intake.** As a routine matter, an agency should conduct regular audits to verify that complaints are being taken properly and to ensure that all employees are adhering to agency rules and standards], available at <https://portal.cops.usdoj.gov/resourcecenter/content.ashx/cops-p164-pub.pdf>; see also 2022

audit report and findings are submitted to the agencies' chief executive given the audit's significance, and, as part of the process, the agencies shall assess and revise its complaint processes and training programs as necessary.

§ 953, subd. (b). This provision requires any Investigating Agency, if requested by the Department, to make available for inspection any records of investigations, audits, and records regarding any other aspect of implementation of Penal Code section 13682, including training, policies, or internal reviews. This provision will permit the Department to respond promptly and effectively to any concerns about the implementation of the statute. This provision is consistent with the Department's general constitutional oversight authority over California law enforcement and its specific authority to promulgate rules for AB 655 investigations, including mechanisms such as this one that ensure compliance with the statute and regulations and permit the Department to address deficiencies in their implementation with respect to individual cases or on a broader scale.

§ 954. Training.

§ 954, subd. (a). This provision requires Investigating Agencies to ensure investigators receive training in conducting administrative investigations of AB 655 complaints, including interview techniques, conducting social media reviews and handling of electronic evidence, all of which may commonly be relevant in AB 655 complaints. Such training is critical to effectuate AB 655's purposes in rooting out extremist behavior, as subpar techniques can render it difficult to discover relevant facts and can undermine the overall quality of the investigation.⁵⁴

§ 954, subd. (a). This provision requires that intake coordinators receive training in the performance of their duties, which are specified in § 943, subds. (g)-(i). Such training is necessary to ensure that intake coordinators understand the nature of their role, including ensuring that all complaints that may be Covered Complaints are promptly routed to investigators.

ECONOMIC IMPACT ASSESSMENT/ANALYSIS

The Department concludes that the proposed regulations are unlikely (1) to create or eliminate jobs within the state, (2) to create new businesses or eliminate existing businesses within the state, or (3) to result in the expansion of businesses currently doing business within the state.

RIPA Report, *supra*, p. 231 and fn. 697 [recommending complaint process audits], available at ripa-board-report-2022.pdf (ca.gov).

⁵⁴See, e.g., California Department of Justice, Sacramento Police Department Report and Recommendations (2019), *supra*, p. 62, available at <https://oag.ca.gov/system/files/attachments/press-docs/spd-report.pdf> [identifying “a clear inconsistency in the quality of interviews” conducted by investigators in officer-involved shooting investigations and recommending that such investigators receive advanced training in, among other things, interview techniques, handling of electronic evidence, and understanding forensic evidence].

The Department also concludes that:

(1) The proposal would benefit the health and welfare of California residents by removing peace officers who, through their engagement in the misconduct identified by the statute, have demonstrated a significant likelihood of engaging in acts of unlawful discrimination, unlawful use of force, and other abuses of constitutional rights under color of law. All Californians stand to benefit from the removal from office of perpetrators of the misconduct identified in the statute.

(2) The proposal would benefit worker safety by removing from employment law enforcement personnel who have been found to have engaged in misconduct representing bias, engagement in hate crimes, or other characteristics that pose an imminent danger to other personnel.

(3) The proposal would have no effect on the state's environment.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDIES, REPORTS OR SIMILAR DOCUMENTS RELIED UPON

1. Assem. Com. on Public Safety, Analysis of Assembly Bill No. 655 (2021-2022 Reg. Sess.) as amended Mar. 25, 2021, at https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202120220AB655# [as of May 29, 2024].
2. Assem. Com. on Appropriations, Analysis of Assembly Bill No. 655 (2021-2022 Reg. Sess.) as amended Mar. 25, 2021, at https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202120220AB655# [as of May 29, 2024].
3. Assem. Com. on Public Safety, Off. of Assem. Floor Analyses, 3d reading analysis of Assem. Bill No. 655 (2021-2022 Reg. Sess.) as amended Jan. 24, 2022, at https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202120220AB655# [as of May 29, 2024].
4. Assem. Com. on Public Safety, Off. of Assem. Floor Analyses, Concurrence in Senate amendments to Assem. Bill No. 655 (2021-2022 Reg. Sess.) as amended Aug. 18, 2022, at https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202120220AB655#.
5. Auditor of the State of California, Law Enforcement Departments Have Not Adequately Guarded Against Biased Conduct (Apr. 2022), at <https://information.auditor.ca.gov/reports/2021-105/index.html> [, 2024].
6. California Department of Justice, Sacramento Police Department Report and Recommendations (2019), at <https://oag.ca.gov/system/files/attachments/press-docs/spd-report.pdf>.
7. California Department of Justice, Review of Sacramento Police Department Report and Recommendations Phase II (2020), at https://oag.ca.gov/system/files/attachments/press-docs/SPD_Report_Phase_II_0.pdf.
8. Commission on Peace Officer Standards and Training, California Department of Justice, Public Complaint Form, at <https://post.ca.gov/public-complaint-form>.
9. Community Oriented Policing Services, U.S. Department of Justice, Critical Response Technical Assessment Review: Police Accountability—Findings and National

- Implications of an Assessment of the San Diego Police Department (2015), at <https://portal.cops.usdoj.gov/resourcecenter/content.ashx/cops-w0756-pub.pdf> [, 2024].
10. Community Oriented Policing Services, U.S. Department of Justice, Standards and Guidelines for Internal Affairs: Recommendations from a Community of Practice (2012), at <https://cops.usdoj.gov/ric/Publications/cops-p164-pub.pdf> [, 2024].
 11. Kern County Superior Court for the State of California, Stipulated Judgment in *People v. City of Bakersfield*, Case No. BCV-21-101928 (Aug. 27, 2021), at [https://oag.ca.gov/system/files/attachments/press-docs/Stipulation and Order.pdf](https://oag.ca.gov/system/files/attachments/press-docs/Stipulation%20and%20Order.pdf).
 12. Law Enforcement Policy Center, International Association of Chiefs of Police (IACP), Investigation of Allegations of Employee Misconduct (Apr. 2019), at <https://www.theiacp.org/sites/default/files/2020-08/Investigation%20of%20Allegations%20of%20Employee%20Misconduct%20-%20FULL.pdf>.
 13. Oakland Police Department, Annual/Semi-Annual Reports (2003-2015), at <https://www.oaklandca.gov/resources/opd-independent-monitoring-team-imt-monthly-reports-2#opd-semi-annual-annual-reports-2003-2015>.
 14. Oakland Police Department Independent Monitoring Team, First Quarterly Report of the Independent Monitor, *Delphine Allen et al., v. City of Oakland, et al.* (Dec. 22, 2023), at <https://oaklandca.s3.us-west-1.amazonaws.com/government/o/OPD/a/publicreports/dowd005015.pdf>.
 15. Office of Inspector General, County of Los Angeles, Los Angeles County Sheriff's Department: Review and Analysis of Misconduct Investigations and Disciplinary Process (Feb. 2021), at https://assets-us-01.kc-usercontent.com/0234f496-d2b7-00b6-17a4-b43e949b70a2/dddb2ccf-34af-4e30-b6a8-7e9d610265d0/IIPublicReport_Body2.pdf.
 16. Office of Inspector General, County of Los Angeles, Complaint/Commendation, at <https://oig.lacounty.gov/file-a-complaint>.
 17. Peace Officers Standards and Training, California Department of Justice, Form 2-251(2024), https://post.ca.gov/portals/0/post_docs/publications/2-251-phsPeaceOfficers.pdf.
 18. Racial Identity and Profiling Advisory Board 2018 Annual Board Report, at <https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/ripa-board-report-2018.pdf>.
 19. Racial Identity and Profiling Advisory Board 2019 Annual Board Report, at <https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/ripa-board-report-2019.pdf>.
 20. Racial Identity and Profiling Advisory Board 2019 Best Practice Recommendations, at <https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/ripa-best-practices-2019.pdf>.
 21. Racial Identity and Profiling Advisory Board 2020 Annual Board Report, at <https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/ripa-board-report-2020.pdf>.
 22. Racial Identity and Profiling Advisory Board 2021 Annual Board Report, at <https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/ripa-board-report-2021.pdf>.
 23. Racial Identity and Profiling Advisory Board 2022 Annual Board Report, at <https://oag.ca.gov/system/files/media/ripa-board-report-2022.pdf>.
 24. Racial Identity and Profiling Advisory Board 2022 Best Practice Recommendations, at <https://oag.ca.gov/system/files/media/2022-ripa-report-best-practices.pdf>.
 25. Racial Identity and Profiling Advisory Board 2023 Annual Board Report, at <https://oag.ca.gov/system/files/media/ripa-board-report-2023.pdf> .

26. Racial Identity and Profiling Advisory Board 2023 Best Practice Recommendations, at <https://oag.ca.gov/system/files/media/2023-ripa-report-best-practices.pdf>.
27. Racial Identity and Profiling Advisory Board 2024 Annual Board Report, at oag.ca.gov/system/files/media/ripa-board-report-2024.pdf.
28. Rushin and DeProspero, Interrogating Police Officers (2019), at <https://www.gwlr.org/wp-content/uploads/2019/06/87-Geo.-Wash.-L.-Rev.-646.pdf>.
29. Senate Com. on Public Safety, Analysis of Assembly Bill No. 655 (2021-2022 Reg. Sess.) as amended Jan. 24, 2022, at https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202120220AB655#.
30. Senate Com. on Appropriations, Analysis of Assembly Bill No. 655 (2021-2022 Reg. Sess.) as amended Jan. 24, 2022, at https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202120220AB655#.
31. Senate Rules Com., Off. of Assem. Floor Analyses, 3d reading analysis of Assembly Bill No. 655 (2021-2022 Reg. Sess.) as amended Jan. 24, 2021, at https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202120220AB655#.
32. Senate Rules Com., Off. of Senate Floor Analyses, 3d reading analysis of Assembly Bill No. 655 (2021-2022 Reg. Sess.) as amended Aug. 18, 2021, at https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202120220AB655#.
33. U.S. District Court for the District of Maryland, Baltimore Consent Decree (Jan. 12, 2017), at https://www.baltimorepolice.org/sites/default/files/General_Website_PDFs/Baltimore_Police_Consent_Decree_3.pdf.

EVIDENCE SUPPORTING DETERMINATION OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Department has made an initial determination that the proposed action would not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The statute and regulations only apply to public agencies, and not businesses.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

The Department determines that these proposed regulations do not affect small businesses.

REASONABLE ALTERNATIVES TO THE PROPOSED ACTION AND THE AGENCY’S REASON FOR REJECTING THOSE ALTERNATIVES

The Department finds that no alternatives were presented to, or considered by, the Department that would be more effective in carrying out the purpose of these proposed regulations or would be as effective and less burdensome to affected private persons than these proposed regulations. The proposed action does not impose costs or requirements on private persons.

Performance Standard as Alternative:

The regulations impose specific procedures to establish consistency and uniformity in the investigation and adjudication of Covered Complaints.