

ACCOUNTABILITY

I. INTRODUCTION

The Commission on Peace Officer Standards and Training (POST) plays a significant role in law enforcement in California. POST has the power to certify peace officers, develop the minimum standards and training for all officers in the state, and, recently, the power to decertify officers. The Racial and Identity Profiling Act, which the Legislature passed to eliminate racial and identity profiling, mandates that POST and the Board collaboratively develop training and policies focused on achieving this goal. In enacting Senate Bill No. 2 (2021-2022 Reg. Sess.) (SB 2), the Kenneth Ross, Jr. Police Decertification Act of 2021, the Legislature provided another accountability tool to POST to address serious misconduct by officers, including those officers who demonstrate bias or engage in racial and identity profiling, and remove them from the profession. A statewide system that decertifies or suspends the certification of officers who have engaged in racial and identity profiling, like the one SB 2 establishes, aligns with the Board's goal of eliminating this practice from policing.

This section of the Report provides an overview of the decertification process and data on certification actions POST initiated against peace officers and examines its potential for addressing bias in policing. Further, this section also provides recommendations to POST to help shape SB 2 into an effective accountability tool and help eliminate racial and identity profiling.

II. SB 2 AND DECERTIFICATION

A. SB 2 Overview

SB 2 establishes a statewide system for the suspension or permanent revocation of a peace officer's certification due to serious misconduct. Before SB 2, POST could only cancel a peace officer's certificate awarded in error or obtained through misrepresentation or fraud. Further, POST did not maintain disciplinary records for California officers.¹ These records were handled in a piecemeal fashion and remained at the level of the individual law enforcement agency or jurisdiction, making it difficult to track problem officers or prevent them from seeking employment at another agency elsewhere in the state.

With the enactment of SB 2, POST can review and investigate complaints of serious misconduct by officers and suspend or revoke an officer's certification in cases of serious misconduct.² Under SB 2, POST is also responsible for developing the regulations and procedures for implementing SB 2 and outlining procedures for the certification and decertification.³

¹ POST, *Peace Officer Certification* <<https://post.ca.gov/Certification>> [as of XX, 2024].

² Pen. Code § 13510.8, subs. (a), (c). Serious misconduct is defined in Section C.2. of this report.

³ See Cal. Code Regs., tit. 11, §1201 et seq.

POST can initiate investigations if it becomes aware of serious misconduct by a peace officer in a number of ways, including by referrals from the officer's agency, a complaint filed by a member of the public, or other means, including through media reports or audits of personnel files.⁴⁵ If the complaint originates with a member of the public, POST sends the complaint to the agency employing the peace officer for an initial investigation, the results of which POST reviews.⁶ By the end of 2023, POST had received more than 22,000 reports of serious misconduct that happened between January 1, 2020, and January 1, 2023, from law enforcement agencies and the general public.⁷

In addition, SB 2 requires POST to revoke the certification of a peace officer who has become ineligible to hold office because of a criminal conviction associated with on and off duty conduct listed under Government Code section 1029.⁸

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

Finally, SB 2 imposes obligations on the California Department of Justice (Cal. DOJ), requiring it to provide POST with necessary disqualifying felony and misdemeanor conviction data for all

⁴ POST, *Penal Code § 13512 Annual Report* (2023) at p. 4

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

⁵ Cal. Code Regs., tit. 11, § 1206, subd. (b); POST, *Public Complaints* <<https://post.ca.gov/public-complaints>> [as of XX, 2024].

⁶ POST, *Public Complaints* <<https://post.ca.gov/public-complaints>> [as of XX, 2024].

⁷ POST, *Penal Code § 13512 Annual Report* (2023) p. 4

<https://post.ca.gov/Portals/0/post_docs/publications/2023_POSAD_Report.pdf> (as of XX, 2024).

⁸ See Pen. Code § 13510.8; Cal. Code Regs., tit. 11, § 1212, subd. (a); see also POST, *Penal Code § 13512 Annual Report* (2023) p. 4 <https://post.ca.gov/Portals/0/post_docs/publications/2023_POSAD_Report.pdf> [as of XX, 2024].

⁹ Pen. Code § 13510.1, subd. (g).

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

¹¹ Pen. Code § 13510.9, subd. (a)(1).

¹² Pen. Code § 13510.9, subd. (a)(1).

¹³ Pen. Code § 13510.9.

persons known to be current or former peace officers.¹⁴ POST is permitted to use this information for decertification purposes.¹⁵

B. The Key Players in The Decertification Process

To effectively implement the statewide system to investigate and decertify officers alleged to have engaged in serious misconduct, SB 2 also created two new entities. One is the Peace Officer Standards Accountability Division (POSAD), which is the investigative entity within POST that conducts investigations and makes findings on whether grounds to decertify or suspend a peace officer exist.¹⁶ The other is the Peace Officer Standards Accountability Advisory Board (Accountability Board), a separate entity that makes recommendations to POST about whether to decertify or suspend a peace officer based on POSAD's findings.¹⁷ The POST Commission and administrative law judges from the Office of Administrative Hearings also play primary roles in the decertification process.¹⁸

1. Peace Officer Standards Accountability Division (POSAD)

POSAD is comprised of six bureaus: a Certification Bureau, an Intake and Disposition Bureau, and four Professional Conduct Bureaus.¹⁹ The Certification Bureau is responsible for certifying officers.²⁰ The Intake and Disposition Bureau reviews public complaints and agency reports submitted to POST.²¹ The Professional Conduct Bureaus conduct the decertification investigations.²² As part of their process, the Professional Conduct Bureaus review investigations of peace officers conducted by law enforcement agencies, and when necessary, independently conduct further investigation into serious misconduct that may provide grounds for suspension or revocation of a peace officer's certification.²³

¹⁴ Gov. Code § 1029, subd. (f).

¹⁵ Gov. Code § 1029, subd. (f).

¹⁶ Pen. Code § 13509.5.

¹⁷ Pen. Code § 13509.6; see also POST, *Peace Officer Standards Accountability Advisory Board* <<https://post.ca.gov/Peace-Officer-Standards-Accountability-Advisory-Board>> [as of XX, 2024].

¹⁸ See POST, Peace Officer Decertification Workflow, https://post.ca.gov/portals/0/post_docs/resources/sb2/Peace_Officer_Decertification_Workflow.pdf [as of XX, 2024]; see also Office of Administrative Hearings, About the Office of Administrative Hearings, <<https://www.dgs.ca.gov/en/OAH/About>> [as of XX, 2024].

¹⁹ SB 2 Workshop Sessions, Peace Officer Certification Workshop #3: Decertification Investigations and Reporting Obligations, <https://www.youtube.com/watch?v=H2hNCB5AI74&list=PLVY_-7Z6jpM2hhwTtiNc7x000_COSFsGw&index=3&t=599s> [as of XX, 2024].

²⁰ POST, *Certification Bureau* <<https://post.ca.gov/certification-bureau>> [as of XX, 2024].

²¹ POST, *Penal Code § 13512 Annual Report* (2023) p. 8 <https://post.ca.gov/Portals/0/post_docs/publications/2023_POSAD_Report.pdf> [as of XX, 2024].

²² See SB 2 Workshop Sessions, Peace Officer Certification Workshop #3: Decertification Investigations and Reporting Obligations, <https://www.youtube.com/watch?v=H2hNCB5AI74&list=PLVY_-7Z6jpM2hhwTtiNc7x000_COSFsGw&index=3&t=599s> [as of XX, 2024]; see also POST, *Penal Code § 13512 Annual Report* (2023) p. 8 <https://post.ca.gov/Portals/0/post_docs/publications/2023_POSAD_Report.pdf> [as of XX, 2024].

²³ Penal Code § 13510.8, subd. (c)(2).

At the end of its investigation, POSAD makes findings as to whether grounds for action against a peace officer's certification exist.²⁴ If POSAD finds reasonable grounds for the denial, suspension, or revocation of a peace officer's certification, POSAD notifies the officer of their findings and reports those findings to the Accountability Board and POST.²⁵ The officer has 30 days to request a review from the Accountability Board.²⁶

2. Peace Officer Standards Accountability Board

The purpose of the Accountability Board is to make recommendations regarding the decertification of officers to POST.²⁷ The Accountability Board is an advisory board consisting of nine members appointed by the Governor and California Legislature.²⁸

When a peace officer requests a review of POSAD's finding that reasonable grounds exist for suspension or revocation of the officer's certification, the Accountability Board holds a public hearing to review those findings before recommending that the POST Commission take action against the officer's certification.²⁹ SB 2 requires the Accountability Board to issue an annual report on the activities of POSAD, the Accountability Board, and POST, relating to the certification program, including the number of applications for certification, the events reported,

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

²⁵ Pen. Code, § 13510.85, subd. (a)(1); Pen. Code, § 13509.5, subd. (b).

²⁶ Pen. Code § 13510.85, subd. (a)(2).

²⁷ Pen. Code § 13509.6, subd. (b).

²⁸ The Board must include: (1) one member who is a current or former peace officer with substantial experience at a command rank, appointed by the Governor; (2) one member who is a current or former peace officer with substantial experience at a management rank in internal investigations; (3) two members who are members of the public, who are not former peace officers, and who have substantial experience working at nonprofit or academic institutions on issues related to police accountability (one of these members must be appointed by the Governor and one by the Speaker of the Assembly); (4) two members who are members of the public, who are not former peace officers, and who have substantial experience working at community-based organizations on issue related to police accountability (one of these members must be appointed by the Governor and one by the Senate Rules Committee); (5) two members who are members of the public, and who are not former peace officers, with strong consideration given to individuals who have been subject to wrongful use of force likely to cause death or serious bodily injury by a peace officer, or who are surviving family members of a person killed by the wrongful use of deadly force by a peace officer, appointed by the Governor; and (6) one member who is an attorney, and who is not a former peace officer, with substantial professional experience involving oversight of peace officers, appointed by the Governor. (Pen. Code § 13509.6, subd. (d)(1) - (6).) The list and biographies of current Accountability Board members can be found on POST's website at <https://post.ca.gov/Peace-Officer-Standards-Accountability-Advisory-Board>. Each member of the Accountability Board is appointed for a term of three years and holds office until the appointment of the member's successor or until one year has elapsed since the expiration of the term for which the member was appointed, whichever occurs first. Vacancies are filled by appointment for the unexpired term of a person with the same qualification for appointment as the person being replaced. No person may serve more than two terms consecutively. The Governor must remove from the Accountability Board any peace officer member whose certification as a peace officer has been revoked, and may, after hearing, remove any member of the Accountability Board for neglect of duty or other just cause. (Pen. Code § 13509.6, subd. (e).)

²⁹ Pen. Code § 13510.85, subd. (a)(2)-(4).

the number of investigations conducted, and the number of certificates surrendered or revoked.³⁰ The first report was published in 2024 and is available in POST’s Data Warehouse.³¹

3. The POST Commission

The POST Commission has 18 members, more than half of whom are peace officers, and of which four are members of the public.³² Fifteen of the Commissioners are appointed by the Governor for three-year terms.³³ Racial, gender, and ethnic diversity must be considered for all appointments.³⁴ The Speaker of the Assembly and the Senate Pro Tempore also each appoint one Commissioner.³⁵ These two appointees must demonstrate expertise in one or more of the following areas: (1) implicit and explicit bias, (2) cultural competency, (3) mental health and policing, and (4) work with vulnerable populations. The California Attorney General is an ex-officio member.³⁶ In prior reports, the Board recommended expanding the number of commissioners to include more public members to “ensure more diverse representation from the public non-sworn community.”³⁷

4. Administrative Law Judges

Administrative law judges (ALJs) from the Office of Administrative Hearings (OAH) preside over decertification hearings. The OAH is a non-judicial administrative agency that functions like a court. The OAH hears administrative disputes and is an independent office housed within the Department of General Services.³⁸ ALJs are appointed by the Director of OAH and are required to have practiced law for at least five years before being appointed.³⁹ They are neutral fact finders, independent of the agencies appearing before them.⁴⁰

C. Grounds for Decertification

A peace officer’s certification will be revoked if the officer has become ineligible to hold office as a peace officer under Government Code section 1029.⁴¹ A peace officer may have their certification suspended or permanently revoked if the officer is terminated for cause or has

³⁰ Pen. Code § 13512, subd. (b)(1) - (10).

³¹ POST, *Penal Code § 13512 Annual Report* (2023) <https://post.ca.gov/Portals/0/post_docs/publications/2023_POSAD_Report.pdf> [as of XX, 2024]; POST, *Decertification: Annual Report* <<https://post.ca.gov/Decertification>> [as of XX, 2024].

³² Pen. Code, § 13500, subd. (b).

³³ Pen. Code § 13500, subds. (a), (e); see, POST, The POST Commission, <<https://post.ca.gov/POST-Commission>> [as of XX, 2024].

³⁴ Pen. Code § 13500, subd. (a).

³⁵ Pen. Code § 13500, subd. (c).

³⁶ Pen. Code § 13500, subd. (d); POST, The POST Commission, <<https://post.ca.gov/POST-Commission>> [as of XX, 2024].

³⁷ Racial and Identity Profiling Advisory Board, *Annual Report* (2023) (“2023 Report”) p. 207 <<https://oag.ca.gov/system/files/media/ripa-board-report-2023.pdf>> [as of XX, 2024]

³⁸ Office of Administrative Hearings, About the Office of Administrative Hearings, <<https://www.dgs.ca.gov/en/OAH/About>> [as of XX, 2024].

³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ Pen. Code § 13510.8, subd. (a)(1).

otherwise engaged in serious misconduct, as described, and defined in Penal Code section 13510.8, subdivision (b) and POST regulations.⁴²

1. Government Code Section 1029

Under Government Code section 1029, a person is disqualified from holding office as a peace officer or being employed as a peace officer of the state, county, city, city and county, or other political subdivision if, among other things, the person has:

- 1) Specified criminal convictions or adjudications,⁴³
- 2) Their certification revoked by POST,
- 3) Voluntarily surrendered their certification pursuant to California Penal Code section 13510.8, subdivision (f),
- 4) Met the minimum requirement for issuance of certification but has been denied issuance of certification, or
- 5) Previously been employed in law enforcement in any state or United States territory or by the federal government, whose name is listed in the National Decertification Index⁴⁴ of the International Association of Directors of Law Enforcement Standards and Training, or any other database designated by the federal government.⁴⁵

Pursuant to SB 2, the POST Commission must revoke the certification of a peace officer if the officer has become ineligible to hold office as a peace officer under section 1029.⁴⁶ The Cal DOJ provides POST with disqualifying felony and misdemeanor conviction data for all persons known to be current or former peace officers.⁴⁷ The POST Commission uses this information for decertification purposes. Once this data is received by POST, it is considered a public record.⁴⁸ The POST Commission may also learn of disqualifying convictions under section 1029 during serious misconduct investigations and from the media.

⁴² Pen. Code § 13510.8, subd. (a)(2).

⁴³ This criminal convictions and adjudications are: (1) any person who has been convicted of a felony; (2) any person who has been convicted of any offense in any other jurisdiction which would have been a felony if committed in California; (3) any person who has been discharged from the military for committing an offense, as adjudicated by a military tribunal, which would have been a felony if committed in California; (4) any person who, after January 1, 2004, has been convicted of a crime based upon a verdict or finding of guilt of a felony by the trier of fact, or upon the entry of a plea of guilty or nolo contendere to a felony; (5) any person who has been charged with a felony and adjudged by a superior court to be mentally incompetent; (6) any person who has been found not guilty by reason of insanity of any felony; (7) any person who has been determined to be a mentally disordered sex offender; (8) any person adjudged addicted or in danger of becoming addicted to narcotics, convicted, and committed to a state institution; and (9) any person who, following exhaustion of all available appeals, has been convicted of, or adjudicated through an administrative, military, or civil judicial process requiring not less than clear and convincing evidence. (Gov. Code § 1029, subd. (a)(1)-(9).)

⁴⁴ For more information on the National Decertification Index of the International Association of Directors of Law Enforcement Standards and Training see *NDI Frequently Asked Questions* (FAQ) <<https://www.iadlest.org/Portals/0/Files/NDI/NDI%20FAQ%20.pdf?ver=xLNUE3YRiwlF2JimncZFkA%3d%3d>> [as of XX, 2024].

⁴⁵ Gov. Code § 1029, subd. (a).

⁴⁶ Pen. Code 13510.8, subd. (a)(1).

⁴⁷ Gov. Code § 1029, subd. (f).

⁴⁸ See Gov. Code § 1029, subd. (f).

Upon a preliminary determination by POSAD that a person is, or has become, disqualified under section 1029 from holding office as a peace officer, the POST Commission serves a notice of intent to revoke the peace officer's certification.⁴⁹ The officer has 30 days from the latest date of mailing of the notice of intent to provide a written detailing the factual or legal basis supporting the contention that a disqualifying conviction did not occur, including all substantiating documents supporting this contention.⁵⁰ If a written response is not received within 30 days, POSAD issues an interim order of disqualification and decertification revoking the officer's certification, pending the POST Commission's final order.⁵¹ If POSAD receives a written response, it reviews the response and conducts any appropriate additional investigation necessary to determine whether a disqualifying conviction occurred.⁵² If POSAD determines that a disqualifying conviction occurred, it serves the interim order of disqualification and decertification on the officer or their legal representative, and the matter is placed on the consent calendar at the next regularly scheduled meeting of the POST Commission.⁵³ If the POST Commission agrees with POSAD's actions, it will summarily affirm the interim order of disqualification and decertification.⁵⁴

[As of August 28, 2024, POST has initiated 345 certification actions against peace officers. One hundred and forty-three of those actions were based on Government Code section 1029.⁵⁵ Of those actions, 110 officers were made ineligible based on section 1029 for a conviction that occurred before SB 2 was enacted, and 33 certifications were revoked following a felony conviction that occurred after January 1, 2022.⁵⁶]

2. Serious Misconduct

As noted above, POST may suspend or revoke the certification of an officer if the person is terminated for cause from employment as an officer or POST determines the person engaged in serious misconduct while employed as a peace officer. "Serious misconduct" is defined as:

⁴⁹ Cal. Code Regs., tit. 11, § 1203, subd. (b).

⁵⁰ Cal. Code Regs., tit. 11, § 1203, subd. (b)(2). POSAD may grant reasonable extensions of time to respond upon a showing of good cause.

⁵¹ Cal Code Regs., tit. 11, § 1203, subd. (b)(3).

⁵² Cal. Code Regs., tit. 11, § 1203, subd. (b)(4).

⁵³ *Ibid.*

⁵⁴ *Ibid.*

⁵⁵ POST, *Peace Officer Certification Actions* <<https://post.ca.gov/Peace-Officer-Certification-Actions>> [as of XX, 2024].

⁵⁷ This includes but not limited to, false statement, intentionally filing false reports, tampering with, falsifying, destroying, or concealing evidence, perjury, and tampering with data. POST, *Peace Officer Certification Actions* <<https://post.ca.gov/Peace-Officer-Certification-Actions>> [as of XX, 2024].

- 1) Dishonesty relating to the reporting, investigation, or prosecution of a crime or relating to the reporting of, or investigation of misconduct by, a peace officer or custodial officer.⁵⁷
- 2) Abuse of power.⁵⁸
- 3) Physical abuse.⁵⁹
- 4) Sexual assault.⁶⁰
- 5) Demonstrating bias on the basis of actual or perceived race, national origin, religion, gender identity or expression, housing status, sexual orientation, mental or physical disability, or other protected status in violation of law or department policy or inconsistent with a peace officer's obligation to carry out their duties in a fair and unbiased manner.⁶¹
- 6) Acts that violate the law and are sufficiently egregious or repeated as to be inconsistent with a peace officer's obligation to uphold the law or respect the rights of members of the public.
- 7) Participation in a law enforcement gang.
- 8) Failure to cooperate with an investigation into potential police misconduct.
- 9) Failure to intercede when present and observing another officer using force that is clearly beyond that which is necessary, as determined by an objectively reasonable officer under the circumstances, "taking into account the possibility that other officers may have additional information regarding the threat posed by a subject."⁶²

The inclusion of "demonstrating bias" in the definition of "serious misconduct" in SB 2 is directly related to RIPA's goal of eliminating racial and identity profiling. As SB 2's implementing regulations explain, an officer is "demonstrating" bias "when the officer either shows or displays, by words, actions or other conduct, prejudice, intolerance, contempt, or hatred towards one or more persons due to that person's membership within a class of persons identified in Penal Code section 13510.8, subdivision (b)(5), when such words, actions, or other conduct would lead a reasonable person to conclude that the officer has not fairly and impartially performed, or will not fairly and impartially perform, their law enforcement duties."⁶³

⁵⁷ This includes but not limited to, false statement, intentionally filing false reports, tampering with, falsifying, destroying, or concealing evidence, perjury, and tampering with data. POST, *Peace Officer Certification Actions* <<https://post.ca.gov/Peace-Officer-Certification-Actions>> [as of XX, 2024].

⁵⁸ Including, but not limited to, intimidating witnesses, knowingly obtaining a false confession, and knowingly making a false arrest.

⁵⁹ Physical abuse includes, but is not limited to, the excessive or unreasonable use of force.

⁶⁰ As described in subdivision (b) of Penal Code section 832.7, and the provision extends to acts committed amongst members of any law enforcement agency.

⁶¹ In December 2023, POST published notice of a proposed amendment to POST Regulation 1205 that would expand the definition of "demonstrating bias" to clarify what POST considers a demonstration of bias. See *Notice of Proposed Regulatory Action – Amend Commission Regulation 1205 – Definitions Related to Serious Misconduct*, No. 2-23-70 <https://post.ca.gov/Portals/0/post_docs/bulletin/2023-70.pdf>; *Text of Proposed Regulatory Action: Amend Commission Regulation 1205* <https://post.ca.gov/Portals/0/post_docs/regulationnotices/2023/2023-70_TPRR_Reg1205.pdf> [as of XX, 2024].

⁶² Pen. Code § 13510.8, subd. (b)(1) – (9); Cal. Code Regs., tit. 11, § 1205.

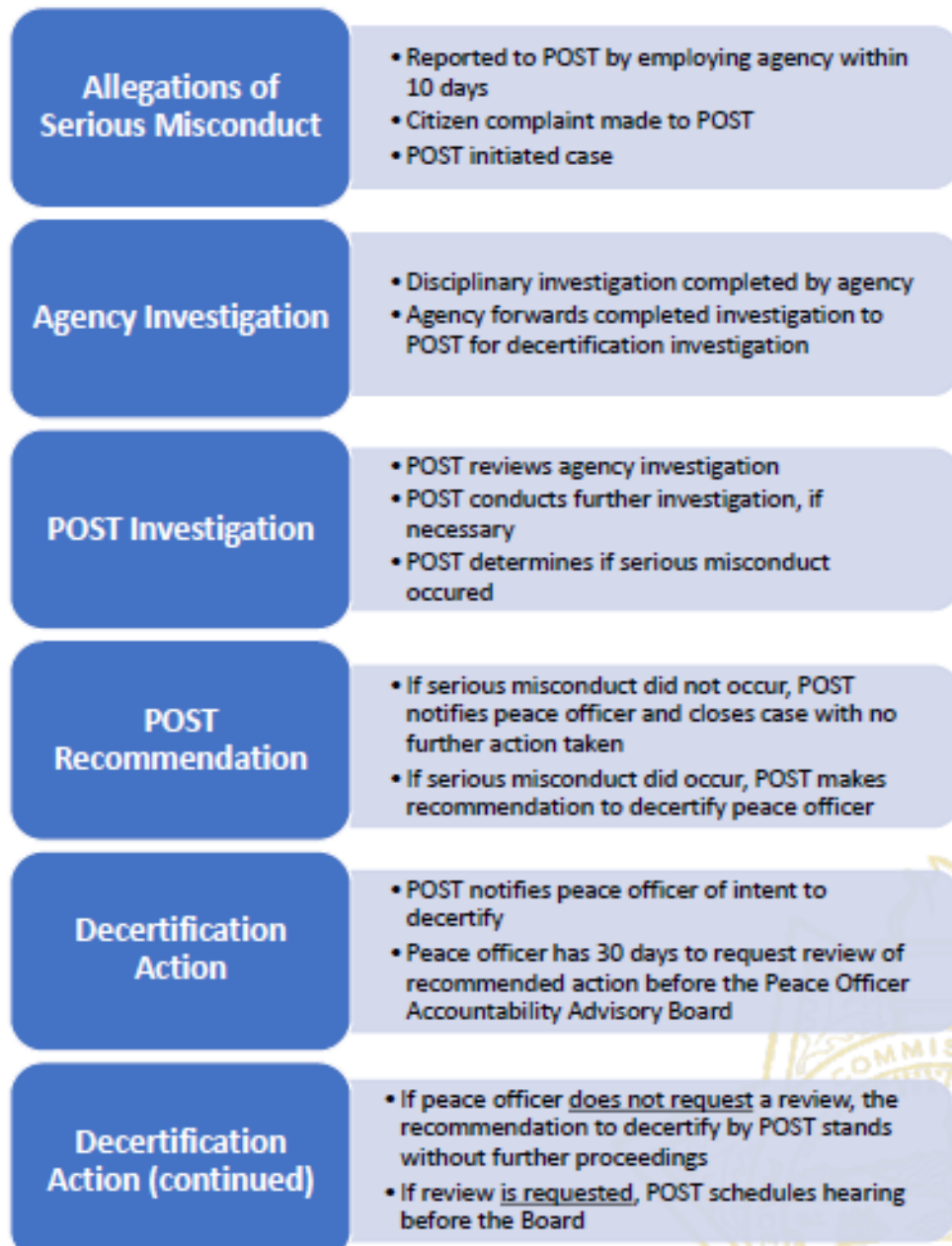
⁶³ Cal Code Regs., tit. 11, § 1205, subd. (a)(5)(A).

D. The SB 2 Decertification Process

The decertification process is very detailed and layered with several steps aimed at preserving due process, including investigations by both the employing agency and POSAD, an appeal of those findings before the Accountability Board, and a determination by the POST Commission regarding whether to initiate a decertification action. The chart below, from POST's website, outlines the different procedural steps in the decertification process.



Peace Officer Decertification Workflow





1. Initiation of an Investigation Based on a Report of Serious Misconduct

Serious misconduct by a peace officer is reported to POST in several ways, including mandatory reporting by law enforcement agencies and by complaints from the public. As noted previously, POST can also initiate an investigation if it becomes aware of possible serious misconduct by an officer through other means, such as through the media or an audit of a personnel file.

a. Reporting by Law Enforcement Agencies

Each law enforcement agency must internally investigate any allegations of serious misconduct by a peace officer, regardless of the officer's employment status.⁶⁴ Under SB 2, POST now provides oversight for those agency investigations. This means agencies must report serious

⁶⁴ Pen. Code § 13510.8, subd. (c)(1).

misconduct allegations and findings of internal investigations of serious misconduct to POST within 10 days of receiving the allegation and within 10 days of the final disposition of any investigation that determines an officer engaged in conduct that could render the officer subject to suspension or revocation.⁶⁵ The duty to report allegations of serious misconduct applies regardless of the investigative outcome and includes cases where the investigation concluded that the allegations were unfounded, not sustained, or resulted in an exoneration.⁶⁶

The duty to report is retroactive to January 1, 2020.⁶⁷ By July 1, 2023, agencies are required to report to POST serious misconduct involving the officers they employ that occurred between January 1, 2020, and January 1, 2023.⁶⁸

In its review, POST's investigative unit, POSAD, is tasked with examining the thoroughness of an agency's investigation, reaching an independent determination on whether there are reasonable grounds to conclude that serious misconduct occurred. Agencies must make their investigation records available to POST, including any physical or documentary evidence, witness statements, analysis, and conclusions.⁶⁹

POST may initiate proceedings to revoke or suspend an officer's certification for conduct that occurred before January 1, 2022, under two circumstances: (1) for serious misconduct defined as dishonesty, sexual assault, or the use of deadly force resulting in death or serious bodily injury and (2) where the employing agency made its final determination regarding an investigation after January 1, 2022.⁷⁰

b. Public Complaints

Members of the public may also submit complaints against peace officers directly to POST.⁷¹ Complaints may be submitted online using POST's Public Complaint Form,⁷² by email or mail, by phone, or in person at POST headquarters.⁷³ Complaints may also be submitted anonymously.⁷⁴

⁶⁵ Pen. Code § 13510.9; Cal. Code Regs., tit. 11, § 1207; see also POST, *Senate Bill No. 2 – Frequently Asked Questions* <<https://post.ca.gov/SB-2-FAQs>> [as of XX, 2024].

⁶⁶ See SB 2 Workshop Sessions, Workshop #3: Decertification Investigations & Reporting Obligations <https://www.youtube.com/watch?v=H2hNCB5AI74&list=PLVY-7Z6jpM2hhwTtiNc7x00O_COSFsGw&index=3> [as of XX, 2024].

⁶⁷ Pen. Code § 13510.9, subd. (b).

⁶⁸ Pen. Code § 13510.9, subd. (b).

⁶⁹ Pen. Code § 13510.9, subd. (c).

⁷⁰ Pen. Code § 13510.8, subd. (g)(1).

⁷¹ POST accepts complaints from members of the public against California peace officers described in Penal Code sections 830.1, 830.2 (except for those described in subdivision (d)), 830.3, 830.32, or 830.33. POST's certification program applies to officers described in these sections. See POST, *Public Complaints* <<https://post.ca.gov/public-complaints>> [as of XX, 2024]; see also Pen. Code § 13510.1, subd. (a).

⁷² POST, *Public Complaint Form* <<https://post.ca.gov/public-complaint-form>> [as of XX, 2024].

⁷³ Cal. Code Regs., tit. 11, § 1206.

⁷⁴ See POST, *Public Complaint Form* <<https://post.ca.gov/public-complaint-form>> [as of XX, 2024].

When POST receives a complaint alleging serious misconduct, it refers the complaint to the officer's employing agency for investigation. The agency is required to forward its findings to POST for review.⁷⁵ POST is required to review those findings to determine if decertification is warranted.

POST has the authority to investigate only those allegations of serious misconduct that could lead to decertification of a California peace officer. It lacks the authority to conduct criminal or administrative investigations that would lead only to agency discipline short of suspension or revocation of the officer's certification.⁷⁶ Complaints from the public that a California peace officer committed a crime, should be reported to the district attorney in the county where the law enforcement agency is located or to the California Department of Justice.⁷⁷

2. Immediate Temporary Suspensions

Under SB 2, POST's executive director is required to immediately suspend a peace officer's certificate of eligibility if circumstances indicate that the temporary suspension is in the best interest of the health, safety, or welfare of the public and any of the following occurs:

- 1) A peace officer is arrested or indicted for any crime described in Government Code section 1029; or
- 2) A peace officer is discharged from any law enforcement agency for grounds set forth in Penal Code section 13510.8, subdivision (a),⁷⁸ or
- 3) A peace officer has separated from employment as a peace officer during a pending investigation into allegations of serious misconduct.⁷⁹

The temporary suspension remains in effect until POST issues its final decision or until the executive director withdraws the order.⁸⁰ An individual may not exercise the powers of a peace officer during any period during which their certification is temporarily suspended.⁸¹

⁷⁵ POST, *Senate Bill No. 2 – Frequently Asked Questions* <<https://post.ca.gov/SB-2-FAQs>> [as of XX, 2024].

⁷⁶ POST, *Public Complaints* <<https://post.ca.gov/public-complaints>> [as of XX, 2024].

⁷⁷ POST, *Public Complaints* <<https://post.ca.gov/public-complaints>> [as of XX, 2024].

⁷⁸ Under Penal Code section 13510.8, subdivision (a), a peace officer's certification may be revoked if the person has become ineligible to hold office as a peace officer pursuant to Government Code section 1029; a peace officer's certification may be suspended or revoked if the officer has been terminated for cause from employment as a peace officer or has otherwise engaged in serious misconduct; and a peace officer's certificate or proof of eligibility may be canceled if POST determines that there was fraud or misrepresentation made by an application during the application process that resulted in a certificate being issued.

⁷⁹ Pen. Code § 13510.8, subd. (d); see also POST, *Information and Options for the Peace Officer: The Immediate Temporary Suspension (ITS) Process* <https://post.ca.gov/portals/0/post_docs/resources/sb2/Immediate_Temporary_Suspension.pdf> [as of XX, 2024].

⁸⁰ Pen. Code § 13510.8, subd. (d).

⁸¹ POST, *Information and Options for the Peace Officer: The Immediate Temporary Suspension (ITS) Process* <https://post.ca.gov/portals/0/post_docs/resources/sb2/Immediate_Temporary_Suspension.pdf> [as of XX, 2024].

Whenever the executive director imposes a temporary suspension, POST must notify the officer and the agency head in writing and specify the basis for the executive director's determination.⁸² The notice must also advise the officer that they have the right to respond in writing within 14 calendar days if the officer believes that the immediate suspension order should be withdrawn.⁸³ Upon the receipt of a response, the executive director will consider the facts, evidence, and argument in the officer's response and must withdraw the immediate temporary suspension if the executive director determines that continuing the suspension is no longer in the best interest of the health, safety, or welfare of the public.⁸⁴ If the executive director does not issue an order of withdrawal within 15 calendar days of service of the officer's response, the response will be treated as denied.⁸⁵

3. POSAD Review and Investigation

Once POST receives the results of the law enforcement agency's internal investigation of serious misconduct, POSAD, the investigation unit within POST, must promptly review any grounds for decertification received from the agency.⁸⁶ POSAD has the authority to review any agency or other investigative authority file, and conduct further investigation to determine whether serious misconduct has occurred. POSAD only has authority to review and investigate allegations for purposes of decertification.⁸⁷ POSAD is required to complete the investigation within three years of receiving the completed report of the disciplinary or internal affairs investigation from the employing agency.⁸⁸ No time limit applies, however, if a report of the conduct was not made to POST.⁸⁹

When evaluating whether to revoke an officer's certification for the incident under investigation, POSAD must consider the peace officer's entire record, including the prior conduct and service record, and any instances of misconduct, including any incidents occurring beyond the three-year time limitation for investigation.⁹⁰ POSAD's investigation is considered complete once it issues a notice to the officer of its intent to deny, suspend, or revoke certification.⁹¹ The three-year time limit for POSAD's investigation is tolled during the appeal of a termination or other disciplinary action through an administrative or judicial proceeding or during any criminal prosecution of a peace officer.⁹²

⁸² Cal. Code Regs., tit. 11, § 1208, subd. (a).

⁸³ The officer's response must be served upon POST within 14 calendar days of the date of the mailing of the Order of Immediate Temporary Suspension, either by personal delivery on POST headquarters, or by mail, postmarked no later than 14 calendar days of the date of mailing of the order to the peace officer. (Cal. Code Regs., tit. 11, § 1208, subd. (a)(1)(A).)

⁸⁴ Cal. Code Regs., tit. 11, § 1208, subd. (a)(1)(B).

⁸⁵ Cal. Code Regs., tit. 11, § 1208, subd. (a)(1)(B).

⁸⁶ Pen. Code § 13510.8, subd. (c)(2).

⁸⁷ Pen. Code § 13510.8, subd. (c)(2).

⁸⁸ Pen. Code § 13510.8, subd. (c)(5).

⁸⁹ Pen. Code § 13510.8, subd. (c)(5).

⁹⁰ Pen. Code § 13510.8, subd. (c)(5).

⁹¹ Pen. Code § 13510.8, subd. (c)(5).

⁹² Pen. Code § 13510.8, subd. (c)(5).

If POSAD finds reasonable grounds for the denial, revocation, or suspension of a peace officer's certification, it must promptly notify the officer in writing, providing the reasons for its conclusion. In the notice, POSAD must also provide a detailed explanation of the decertification procedure, including information about the officer's rights to contest and appeal.⁹³

Within 30 days of receiving notice from POSAD, the officer may file a request for review of the determination by the Accountability Board and POST.⁹⁴ If a timely request for review is filed, the Accountability Board will schedule the case for a hearing. If no timely request for review is received, the officer's certification will be suspended or revoked without further proceedings.⁹⁵

Instead of appealing the decision, the officer can voluntarily surrender their certification.⁹⁶ In that case, the matter will be administratively closed without further legal proceedings, and the person would be permanently ineligible for employment as a peace officer in California. Voluntary permanent surrender of certification has the same effect as revocation, meaning that the certification cannot be reactivated.⁹⁷ This, however, would not prohibit officers from seeking employment in other states because California does not have jurisdiction over hiring in other states, but reporting misconduct to the National Decertification Index (NDI) of the International Association of Directors of Law Enforcement Standards and Training will at a minimum place other jurisdictions on notice that an officer's certification has been revoked in California.

4. Public Hearings Before the Accountability Board and the POST Commission

If the officer appeals POSAD's determination, POST schedules a public hearing before the Accountability Board. Following the hearing, the Accountability Board may only recommend revocation if the factual basis for revocation is established by clear and convincing evidence.⁹⁸ If the Accountability Board determines that the facts and circumstances warrant a sanction other than revocation, it may recommend suspension for a period of time.⁹⁹ The Accountability Board must issue a written decision explaining its reasons for decertification or suspension.

⁹³ Pen. Code § 13510.85, subd. (a)(1). POST has issued a guide that is intended to serve that purpose. See POST, *Guide to Peace Officer Decertification Proceedings and Officer Rights to Contest and Appeal* (Aug. 2023) <https://post.ca.gov/portals/0/post_docs/resources/sb2/Guide_to_Decertification.pdf> [as of XX, 2024].

⁹⁴ Pen. Code § 13510.85(a)(2); Cal. Code Regs., tit. 11, § 1209. The request for review must be received by POST or postmarked within 30 calendar days of the date of mailing of the notice of intent to suspend or revoke the officer's certification. (Cal. Code Regs. § 1209, subd. (b).); POST, *Guide to Peace Officer Decertification Proceedings and Officer Rights to Contest and Appeal* (Aug. 2023) p. 6 <https://post.ca.gov/portals/0/post_docs/resources/sb2/Guide_to_Decertification.pdf> [as of XX, 2024].

⁹⁵ Pen. Code § 13510.85, subd. (a)(2).

⁹⁶ Cal. Code Regs., tit. 11, § 1209, subd. (c).

⁹⁷ POST, *Guide to Peace Officer Decertification Proceedings and Officer Rights to Contest and Appeal* (Aug. 2023) p. 6 <https://post.ca.gov/portals/0/post_docs/resources/sb2/Guide_to_Decertification.pdf> [as of XX, 2024].

⁹⁸ Pen. Code § 13510.85, subd. (a)(4). The clear and convincing evidence standard "requires a finding of high probability." (*In Re White* (2018) 21 Cal.App.5th 18, 28.)

⁹⁹ Pen. Code § 13510.85, subd. (a)(4).

Following the hearing before the Accountability Board, the POST Commission schedules a public hearing to review the Accountability Board’s recommendation.¹⁰⁰ A decision to adopt the recommendation to seek revocation of the officer’s certification requires two-thirds of the POST Commissioners present to agree that clear and convincing evidence supports the Accountability Board’s conclusion that the officer engaged in serious misconduct.¹⁰¹ If the POST Commission rejects the recommendation, the Commission must explain its analysis and reasons for reaching a different conclusion in writing.¹⁰²

The hearings serve as a mechanism by which the Accountability Board and the POST Commission can preliminarily determine whether there are reasonable grounds to conclude that serious misconduct occurred and whether the case should be referred for a full evidentiary hearing.¹⁰³ Therefore, although the officer may attend both hearings or choose to have counsel present, neither the officer nor their counsel may present witness testimony, other evidence, or argument.¹⁰⁴ Only POSAD may present the findings of its investigation to the Accountability Board and subsequently to the POST Commission.¹⁰⁵ The officer or their counsel can only address the issue of the sufficiency of POSAD’s findings during the public comment period.¹⁰⁶

If the POST Commission determines that action should be taken against the officer, POST will return the matter to POSAD for further proceedings. POSAD will then file an Accusation or Statement of Issues with the OAH for a formal hearing before an ALJ.¹⁰⁷ If the Commission rejects the Accountability Board’s recommendation to suspend or revoke a certification, no further action is taken unless additional investigation is requested.¹⁰⁸

5. The Administrative Hearing Before OAH

The administrative hearing on an officer’s certification is a public hearing like a civil court trial.¹⁰⁹ The administrative law judge finds whether there is a basis to decertify an officer based

¹⁰⁰ Pen. Code § 13510.85, subd. (a)(5).

¹⁰¹ Pen. Code § 13510.85, subd. (a)(5).

¹⁰² Pen. Code § 13510.85, subd. (a)(5).

¹⁰³ POST, *Guide to Peace Officer Decertification Proceedings and Officer Rights to Contest and Appeal* (Aug. 2023) p. 6 <https://post.ca.gov/portals/0/post_docs/resources/sb2/Guide_to_Decertification.pdf> [as of XX, 2024].

¹⁰⁴ Cal. Code Regs., tit. 11, § 1209, subd. (e)(2)(A).

¹⁰⁵ Pen. Code § 13510.85, subd. (a)(4); Cal. Code Regs., tit. 11, § 1209.

¹⁰⁶ Cal. Code Regs., tit. 11, § 1209; Cal. Code Regs., tit. 11, § 1209, subd. (e)(2)(B).

¹⁰⁷ POST, *Guide to Peace Officer Decertification Proceedings and Officer Rights to Contest and Appeal* (Aug. 2023) p. 8 <https://post.ca.gov/portals/0/post_docs/resources/sb2/Guide_to_Decertification.pdf> [as of XX, 2024]; Pen. Code § 13510.85, subd. (a)(6). The hearing is held in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 1150) of part 1 of Division 3 of Title 2 of the Government Code and is subject to judicial review.

¹⁰⁸ POST, *Peace Officer Decertification Workflow* <https://post.ca.gov/portals/0/post_docs/resources/sb2/Peace_Officer_Decertification_Workflow.pdf> [as of XX, 2024].

¹⁰⁹ Any records introduced during the hearings of the Board and the ALJ and the review by POST are public. These public records may, in the discretion of POSAD, be redacted for the reasons set forth in Penal Code section 832.7, subdivision (b)(6) and (7). This subdivision does not preclude the Accountability Board or POST, or both, from

on their conduct and the POST Commission may, partly or wholly, adopt or reject the ALJ's decision.

6. POST's Certification of the ALJ's Decision

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

- 1) Adopt the ALJ's proposed decision in its entirety.
- 2) Reduce or otherwise mitigate the proposed penalty and adopt the balance of the proposed decision.
- 3) Make technical or other minor changes in the proposed decision and adopt it as the decision.¹¹⁰
- 4) Reject the proposed decision and refer the case to the same ALJ if reasonable available, otherwise to another ALJ, to take additional evidence.¹¹¹
- 5) Reject the proposed decision, and decided the case upon the record, including the transcript, or upon an agreed statement of the parties, with or without taking additional evidence. By stipulation of the parties, the agency may decide the case upon the record without including the transcript.¹¹²

POST's decision is deemed final 30 days after the date of service of the decision upon the involved peace officer or their legal representative.¹¹³ POST must publish the names of any

reviewing the unredacted versions of these records in closed session and using them as the basis for any action taken. (Pen. Code § 13510.85, subd. (b).)

¹¹⁰ Action by the agency is limited to a clarifying change or a change of a similar nature that does not affect the factual or legal basis of the proposed decision.

¹¹¹ If the case is referred to an ALJ, the ALJ must prepare a revised proposed decision, based upon the additional evidence and the transcript and other papers that are part of the record of the prior hearing. A copy of the revised proposed decision must be provided to each party and their attorney.

¹¹² Gov. Code § 11517, subd. (c)(2)(A) - (E). If the agency takes this action, all the following apply: (1) a copy of the record must be made available to the parties. The agency may require payment of fees covering direct costs of making the copy; (2) the agency itself may not decide any case without affording the parties the opportunity to present either oral or written argument before the agency itself. If additional oral evidence is introduced before the agency itself, no agency member may vote unless the member heard the additional oral evidence; (3) the authority of the agency itself to decide the case includes authority to decide some but not all issues in the case; and (4) if the agency elects to take this action, the agency must issue its final decision not later than 100 days after rejection of the proposed decision. If the agency elects to take this action and has ordered a transcript of the proceedings before the ALJ, the agency must issue its final decision not later than 100 days after receipt of the transcript. If the agency finds that further delay is required by special circumstance, it must issue an order delaying the decision for no more than 30 days and specifying the reasons therefor. The order is subject to judicial review pursuant to Government Code section 11523.

¹¹³ A copy of the written decision must be provided to (1) the Accountability Board, (2) POSAD, (3) the involved peace officer or designated representative, and (4) the head of the agency that employs or employed the involved peace officer. (Cal. Code Regs., tit. 11 § 1212, subd. (c)(3).)

peace officer whose certification is suspended or revoked and the basis for the suspension or revocation on its website.¹¹⁴ POST must also notify the NDI of the suspension or revocation.¹¹⁵

POST must retain its records of an investigation of any person for 30 years following the date that the investigation is deemed concluded.¹¹⁶

E. POST Certification Actions by the Numbers

1. Misconduct Reports

Beginning January 1, 2023, and continuing to August 29, 2024, POST has received 28,568 misconduct reports from law enforcement agencies, as well as 1,175 public complaints submitted directly to POST. Of those agency misconduct reports, 16,568 or 58.00 percent related to an incident that took place prior to January 1, 2023. These agency misconduct reports have resulted in 19,107 cases assigned to POST investigators, of which 7,561 or 39.57 percent have been closed. There remain 9,412 or 32.95 percent of agency misconduct reports not yet assigned to a POST investigator.

When it receives a report, complaint, or other allegation of serious misconduct, POST classifies the type of serious misconduct alleged. As shown in **Figure X** below, of the serious misconduct allegations POST has received between January 1, 2023, and August 29, 2024, physical abuse/excessive force is the most common type of serious misconduct alleged, followed by demonstrating bias, abuse of power, dishonesty, acts that violate the law, and sexual assault.

Basis ¹¹⁷	Allegations Received ¹¹⁸	
	Number	Percent
Physical Abuse/Excessive Force	12,321	37.82%
Demonstrating Bias	8,872	27.23%
Abuse of Power	4,375	13.43%
Dishonesty	2,438	7.48%

¹¹⁴ Cal. Code Regs., tit. 11, § 1212, subd. (d). The list of officers whose certification is suspended or revoked and the basis for the suspension or revocation is available at <<https://post.ca.gov/Peace-Officer-Certification-Actions>> [as of XX, 2024].

¹¹⁵ Pen. Code § 13510.85, subd. (c); Cal. Code Regs., tit. 11, § 1212, subd. (e). Records are entered into the NDI by the governing body in each state charged with establishing standards for police officer training and certification. These state agencies are known as POST Agencies. Not all states have established a POST agency. See IADLEST, NDI Frequently Asked Questions (FAQ) (Oct. 4, 2023)<<https://www.iadlest.org/Portals/0/Files/NDI/NDI%20FAQ%20.pdf?ver=xINUE3YRiwlF2JimncZFkA%3d%3d>> [as of XX, 2024.] According to the IADLEST website, the NDI currently contains 54,906 actions reported by 50 certifying agencies. IADLEST, About NDI, <<https://www.iadlest.org/our-services/ndi/about-ndi>> [as of XX, 2024]

¹¹⁶ Pen. Code § 13510.8, subd. (e).

¹¹⁷ A report or complaint of misconduct may include multiple types of misconduct.

¹¹⁸ Number of allegations is as assessed by POST. Any one report, complaint, and/or case may include multiple allegations, and reports, complaints, and/or cases may involve one or more officers. Allegations were received by POST starting January 1, 2023, and this data is current to August 29, 2024. POST, Peace Officer Certification Reporting, <https://post.ca.gov/Peace-Officer-Certification-Reporting> [as of XX, 2024].

Basis ¹¹⁷	Allegations Received ¹¹⁸	
Acts that Violate the Law	2,166	6.65%
Sexual Assault	1,294	3.97%
Convicted of a Felony	590	1.81%
Other Serious Misconduct	526	1.61%

2. Common Grounds for Certification Actions

According to POST’s online listing of certification actions, the most common ground for decertification related to serious misconduct so far is physical abuse or excessive force, followed by sexual assault, dishonesty, demonstrating bias, abuse of power, and failure to cooperate.¹¹⁹ As of March 14, 2024, there have been no SB 2 misconduct certification actions relating to participation in a law enforcement gang or the failure to intercede when present and observing force that is clearly unnecessary.¹²⁰

Basis ¹²¹	Certification Actions ¹²²	
	Number	Percent
Acts that Violate the Law	66	50.00%
Physical Abuse/Excessive Force	28	21.21%
Sexual Assault	12	9.09%
Dishonesty	9	6.82%
Demonstrating Bias	7	5.30%
Other Serious Misconduct	6	4.55%
Abuse of Power	4	3.03%

¹¹⁹ See POST, *Peace Officer Certification Actions* <<https://post.ca.gov/Peace-Officer-Certification-Actions>> [as of XX, 2024]. [POST website is updated weekly numbers will be made close to current for final draft.]

¹²⁰ POST, *Peace Officer Certification Actions* <<https://post.ca.gov/Peace-Officer-Certification-Actions>> [as of XX, 2024]. [POST website is updated weekly; numbers will be made close to current for final draft.]

¹²¹ The basis of allegations and certification actions may include multiple types of misconduct.

¹²² A certification action is a suspension or revocation of a certificate, or an officer being made ineligible pursuant to Government Code section 1029. A certification action may be the result of one or more allegations. Certification actions began on January 1, 2023. This data is current to March 14, 2024. [POST website is updated weekly; numbers will be made close to current for final draft.]

3. SB 2 Top 10 Agencies

As of March 14, 2024, ten law enforcement agencies have had five or more SB 2 certification actions¹²³ against an officer who was last employed by that agency. Generally, the most common type of serious misconduct involves acts that violate the law.¹²⁴ POST notes that 265, or 43 percent of California law enforcement agencies, have not submitted any misconduct reports to POST.¹²⁵

Last Employing Agency	SB2 Actions	Sworn Officers	Most Common Certification Action	Most Common Serious Misconduct
Los Angeles County SD	30	9185	13 Temporary Suspensions	8 Acts that Violate the law
California Highway Patrol	12	6651	8 Temporary Suspensions	7 Physical Assault/Excessive Force
Los Angeles PD	11	9226	5 Ineligible Pursuant to GC 1029	5 Acts that Violate the law
Torrance PD	8	180	8 Temporary Suspensions	5 Demonstrating Bias
Antioch PD	6	101	6 Temporary Suspensions	5 Acts that Violate the law
Alameda County SD	5	1062	4 Temporary Suspensions	3 Acts that Violate the law
Riverside County SD	5	1659	2 Temporary Suspensions & 2 Ineligible Pursuant to GC 1029	2 Acts that Violate the law
San Bernardino County SD	5	1875	3 Ineligible Pursuant to GC 1029	2 Acts that Violate the law
San Francisco PD	5	1942	4 Temporary Suspensions	4 Acts that Violate the law
Tulare County SO	5	502	3 Ineligible Pursuant to GC 1029	1 Sexual Assault

4. Temporary Suspensions

Currently, temporary suspensions make up around half of all certification actions POST has taken against officers. [As of March 14, 2024, there are 78] temporary suspensions related to a pending criminal proceeding. They have been pending for an average of 224 days. Twenty-three temporary suspensions, which do not have a collateral criminal proceeding, have been pending for 260 days on average. Those proceedings are typically related to serious misconduct of a discharged or retired officer. [As of March 14, 2024, only 14] temporary suspensions reached a

¹²³ A certification action includes a revocation or suspension of a peace officer's certification, or an officer being found ineligible to hold office as a peace officer under Government Code section 1029.

¹²⁴ POST, *Peace Officer Certification Actions* <<https://post.ca.gov/Peace-Officer-Certification-Actions>> [as of XX, 2024].

¹²⁵ POST, *Penal Code § 13512 Annual Report (2023)* p. 13 <https://post.ca.gov/Portals/0/post_docs/publications/2023_POSAD_Report.pdf> [as of XX, 2024].

final disposition. Of those 14, four temporary suspensions with related collateral criminal proceedings took an average of 153 days to resolve. The other 10, the ones without collateral criminal proceedings, took an average of 181 days to conclude.¹²⁶

F. Board Observations of the Decertification Process

SB 2 promises to be a valuable accountability tool to address serious misconduct by peace officers. After reviewing the process, which included obtaining information from POST, the Board makes recommendations designed to enhance SB 2's decertification process and effectuate the legislature's goal at addressing serious misconduct. The Board, therefore, offers the following recommendations to address those gaps:

(1) The Board recommends that the Legislature enact legislation to fund a statewide public awareness campaign to inform the public about SB 2 and, more specifically, the public's ability to file civilian complaints directly with POST.

(2) While California law identifies nine categories of serious misconduct that serve as the basis for POST to suspend or revoke certification, these categories do not encompass all areas of misconduct officers may engage in that are harmful to the public and incompatible with their duties as peace officers. One type of misconduct could be described as a dereliction of duty, which does not meet the definition of an act that violates the law and is sufficiently egregious or repeated as to be inconsistent with a peace officer's obligation to uphold the law or respect the rights of the public in Penal Code section 13510.8, subdivision (b) (6). The circumstances to which this ground for decertification would apply may vary. The common thread, however, would be the careless or intentional failure to perform one's responsibilities as a peace officer, where the failure to do so resulted in harm to the public.¹²⁷ Therefore, the Board recommends that the Legislature consult with POST, law enforcement agencies, experts, researchers, and community groups about harmful conduct by officers that may not fit within the nine categories but is incompatible with the duties of a peace officer. The Board further recommends that the Legislature make findings and amend Penal Code section 13510.8 to add that category.

(3) In some circumstances where POST issues an immediate temporary suspension for an officer who commits a crime, the officer may later be placed in a diversion program. In that situation, the criteria needed to continue the immediate temporary suspension would be removed, and the executive director would be required to withdraw the suspension. POST would have no means to suspend the officer from serving as a peace officer while investigating the officer for serious misconduct even if the officer poses a significant danger to vulnerable populations.

To address those circumstances, the Board recommends that the Legislature amend Penal Code section 13510.8, subdivision (d) to expand the authority of the POST Executive Director to continue an immediate temporary suspension of an officer where the circumstances indicate that

¹²⁶ POST, *Peace Officer Certification Actions* <<https://post.ca.gov/Peace-Officer-Certification-Actions>> [as of XX, 2024].

¹²⁷ Justia Legal Dictionary <<https://dictionary.justia.com/dereliction-of-duty>> [as of XX, 2024].

the officer continues to pose a danger to the public even if one of the statutory grounds for imposing the immediate temporary suspension has been resolved.

(4) The Board further recommends that the Legislature enact legislation requiring law enforcement agencies throughout California to modify their disciplinary policies for serious misconduct to align with the categories in Penal Code section 13510.8, subdivision (b). Research indicates that law enforcement agencies use their agency policies to bring disciplinary actions against officers. Where an agency's policies do not match those in section 13510.8, there could be difficulty assessing whether an agency's investigation was adequate, one of POST's duties under SB 2. Therefore, the Board recommends that the Legislature amend Penal Code section 13510.8 to require agencies to align their policies defining serious misconduct with the categories in section 13510.8, subdivision (b).

(5) Relatedly, the Board recommends that POST develop guidelines to assist law enforcement agencies in developing procedures to conduct adequate investigations into the complaints of serious misconduct the agencies receive and the ones that POST forwards to the agencies to investigate under SB 2. In developing the guidelines for investigating complaints about demonstrating bias, POST could consult with the Board.

(6) California has a public policy of encouraging employees to notify an appropriate government or law enforcement agency, the person with authority over the employee, or another employee with authority to investigate, discover, or correct a violation when a public employee violates a law or policy.¹²⁸ SB 2 does not contain any specific protection for whistleblowers within law enforcement agencies who report serious misconduct, including racial bias, by fellow officers. Lack of protections for reporters and fear of retaliation may prevent officers from reporting serious misconduct. Including the specific public policy of whistleblower protection for officers who report misconduct harmful to vulnerable populations would help engender a culture of accountability in law enforcement agencies statewide.

Therefore, to provide protection for officers who report serious misconduct of fellow officers and to encourage a culture of accountability, the Board recommends that the Legislature amend Penal Code section 13510.8 to include whistleblower protection for peace officers and other individuals within a law enforcement agency who report serious misconduct by fellow peace officers.

G. How to File a Complaint with POST

Members of the public can submit complaints regarding officer misconduct with POST directly on the following web-based form:

<https://post.ca.gov/public-complaint-form>

¹²⁸ See Gov. Code, § 8547 et seq.

A copy of the paper form can be located here:

https://post.ca.gov/Portals/0/post_docs/forms/2-354.pdf

If you have any questions regarding the complaint process POST can be contacted at

ComplaintIntake@post.ca.gov
[\(916\) 227-2822](tel:(916)227-2822)

III. VISION FOR FUTURE REPORTS

[Content Under Development]

- [Although the NDI is an important tool for tracking the decertification of officers across states, participation in the database is not mandatory. Further, because decertification standards vary widely across states, an action by a peace officer that may result in decertification in California may not result in a decertification in another state and thus not be reported to the national database. In future reports, the Board will examine efforts that can be made to support the development of a national mandatory database for reporting decertified or ineligible officers.]