

This letter was drafted after discussion by the POST Subcommittee and is intended for the RIPA Board's review and consideration.

[SALUTATION]:

Thank you for inviting the Racial and Identity Profiling Advisory (RIPA) Board to participate in the Senate Bill 2 (S.B.2) Stakeholder Meeting in January 2022. We are writing to memorialize our recommendations to the Peace Officer's Standards and Training (POST) Commission on the regulations pertaining to the definition of "serious misconduct" under Penal Code section 13510.8.

"The RIPA Board was formed as part of the Racial and Identity Profiling Act of 2015 (AB 953), and began its work in July 2016. The Legislature charged the Board with an ambitious purpose: to eliminate racial and identity profiling, and improve diversity and racial and identity sensitivity in law enforcement. By unifying a diverse group of individuals from across different sectors – law enforcement, civil and human rights, and academia – in a shared cause, the RIPA Board aims to improve law enforcement-community relations in California through collaboration, transparency, and accountability."¹

The imposition of mandatory stop data collection and the creation of the RIPA Board are among the many steps the Legislature has taken to help identify and shield the public from the effects of biased policing. One of the Legislature's most recent efforts to reform policing was Senate Bill 2: The Kenneth Ross Jr. Police Decertification Act of 2021, a bill named in the memory of Kenneth Ross Jr., a Black man shot and killed by a Gardena police officer who was employed by the Gardena Police Department after being involved in three prior "questionable" shootings in his previous policing agency.²

In passing S.B.2, the Legislature acknowledged that "Black and Latino families and communities of color are disproportionately vulnerable to police violence,"³ and it committed to creating a system to "ensure that officers who abuse their authority by committing serious or repeated misconduct, or otherwise demonstrate a lack of fitness to serve as peace officers, are removed from the streets."⁴ To that end, this bill was passed to end the too-common practice of allowing officers who have been fired or resigned from one agency due to misconduct to be re-hired at new agencies, only to "go on[] to commit further serious acts of misconduct."⁵ An agency's determination that an officer is unfit for duty is powerful evidence and is consistent with the "nearly universal recognition across the country that local law enforcement cannot be relied upon to protect our residents from people that should not be peace officers."⁶ Given the importance of rooting out unfit officers, the Legislature went further by providing a decertification process where the public, Commission, or Board may also identify officers to be investigated for disqualifying conduct even if those officers are not found guilty of misconduct by their

¹ Racial and Identity Profiling Advisory Board, 2021 Annual Report (2018), p. 4

<<https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/ripa-board-report-2018.pdf>> [as of March 28, 2022].

² Chabria, *How a Black Lawmaker From L.A. Won a 'Mammoth Fight' to Oust Bad Cops*, L.A. Times (Oct. 1, 2021) <<https://www.latimes.com/california/story/2021-10-01/how-black-los-angeles-lawmaker-won-fight-to-oust-bad-cops>> [as of March 28, 2022].

³ Sen. Bill No. 2 (2021-2022 Reg. Sess.), §§ 1, 2, subd. (c).

⁴ *Id.* at §§ 1, 2, subd. (d).

⁵ Sen. Com. on Pub. Safety, Rep. on Sen. Bill 2 (2021-2022 Reg. Sess.) Apr. 13, 2021, p. 10.

⁶ *Id.*

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employing agencies.⁷ The Legislature further mandates that the decertification process “maintain independence from law enforcement” so that it may effectively “hold peace officers accountable for misconduct . . . [against] standards . . . [that] reflect community values.”⁸

Altogether, the goal of the decertification process is to ensure that police officers are “held to the *highest standard of accountability*” and “that individual peace officers who abuse their authority are held” to that standard.⁹ The Legislature’s statements along with the overall decertification scheme makes clear its intent that decertification serve as an *additional* form of accountability, not limited by the measures that policing agencies have already taken to address misconduct by their employees, to ensure that officers meet the “highest standards” of community values and is not limited to addressing only the most egregious acts of police misconduct.

Senate Bill 2 tasks the POST Commission with creating criteria for determining when officers have committed “serious misconduct” and may be “considered for ineligibility for, or revocation of, certification.”¹⁰ The statute identifies as exemplars of “serious misconduct” nine categories, including “demonstrating bias,” which is defined as “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.”¹¹

With respect to the definition of “demonstrating bias,” the RIPA Board recommends that the regulations reflect the following:

1. **Clarify that bias based upon an officer’s perception of an individual’s identity, not only their actual identity, would be a basis for decertification.** The Racial and Identity Profiling Act recognizes that individuals are often treated differently on the basis of their perceived identity, even if it conflicts with their actual identity, and requires officers to track their actions taken on the basis of their perceptions of the identities of members of the public. The definition of racial and identity profiling created by that Act also includes profiling based upon “actual or perceived” identities. It would be consistent with this expressed legislative intent and the reality of how members of the public are acted upon by law enforcement if the definition of bias under the S.B.2 regulations reflected bias-based conduct based upon an individual’s actual or perceived identity.
2. **The definition of bias should explicitly include, but not be limited to, conduct that would constitute illegal profiling as defined by Penal Code Section 13519.4.** The definition of racial or identity profiling within this section includes “the consideration of, or reliance on, to any degree, actual or perceived race, color, ethnicity, national origin, age, religion, gender identity or expression, sexual orientation, or mental or physical disability in deciding which persons to subject to a stop or in deciding upon the scope or substance of law enforcement activities following a stop, except that an officer may

⁷ Sen. Bill No. 2 (2021-2022 Reg. Sess.), § 13, subd. (c)(3)(A-B); § 8, subd. (d).

⁸ Sen. Bill No. 2 (2021-2022 Reg. Sess.), §§ 1, 2, subd. (e).

⁹ *Id.* at §§ 1, 2, subds. (a), (d).

¹⁰ Pen. Code, § 13510.8, subd. (b).

¹¹ *Id.* at §. 13510.8, subd. (b)(5).

consider or rely on characteristics listed in a specific suspect description. The activities include, but are not limited to, traffic or pedestrian stops, or actions during a stop, such as asking questions, frisks, consensual and nonconsensual searches of a person or any property, seizing any property, removing vehicle occupants during a traffic stop, issuing a citation, and making an arrest.”¹² Violation of these tenets to subject an individual to police action in part because of their identity characteristics is undoubtedly an “abuse of authority” that reflects a “lack of fitness to serve as peace officers” that strikes directly to the heart of the bias the Legislature sought to address, and should be grounds upon which POST may decertify.

3. Acts or omissions that would render an individual ineligible as a peace officer under Government Code Section 1031.3 should be included as grounds for decertification.

The Legislature recently passed A.B. 846, which required POST to incorporate into its screening materials for assessing the fitness of individuals who apply to be peace officers guidelines for identifying explicit or implicit bias “against race or ethnicity, gender, nationality, religion, disability, or sexual orientation.”¹³ In discussing the need for a more intensive process to screen out officer biases, the Legislature cited existing “disparities in stop, search, and arrest rates across demographic groups” and acknowledged that “bias among law enforcement is especially dangerous because of the positions of power they hold.”¹⁴ It further reasoned that it was “critical that we require screening of bias during the hiring process and recognize how to take steps to counteract their influence . . . [and] make sure that officers are trained and acting on facts, not biases.”¹⁵ These concerns are equally, if not more, valid when applied to officers that have already been hired and are actively policing our communities. While POST is currently in the process of finalizing regulations to guide the bias assessments of investigators and evaluators, these guidelines should be incorporated into the decertification process, such that individuals who would be deemed ineligible for employment as an officer under these screening guidelines as a result of implicit or explicit bias should also be eligible for decertification.

With these recommendation, we want to underscore that the regulations clarifying what conduct constitutes serious misconduct be sufficiently inclusive to incorporate the spirit of recent state legislation pertaining to hiring/screening and the definition of bias in policing. Under the statute, acts that constitute “serious misconduct” serve only as “criteria to be considered for” decertification, but do not mandate decertification. Other jurisdictions utilize very broad language to ensure that officers are aware of the range of conduct that may result in their decertification and provide the certifying agencies with maximal authority to remove officers if the facts justify such action. For instance, in Georgia, its authority can refuse certification or discipline certified peace officers for “any act or omission which is indicative of bad moral character or untrustworthiness,”¹⁶ and in Mississippi, officers’ certificates can be revoked for “an

¹² *Id.* at §. 13519.4, subd. (e).

¹³ *Id.* at § 1031.3.

¹⁴ Sen. Com. on Pub. Safety, Rep. on Assem. Bill 846 (2019-2020 Reg. Sess.) July 31, 2020, p. 4.

¹⁵ *Id.*

¹⁶ Ga. Code, § 35-8-7.1, subd. (8).

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act of malfeasance.”¹⁷ POST should follow this trend to ensure that the California regulations similarly provide sufficient notice to officers and range of discretion to the POST Commission.

Thank you for your time and attention.

Regards,

[SIGNATURE]

¹⁷ Miss. Code, § 45-6-11, subd. (7)(e).