

October [X], 2021  
California Commission on POST  
Attention: Rulemaking  
*Via email*

**RE: Comment on proposed amendments to Commission on Peace Officer Standards and Training (POST) regulations implementing Assembly Bill 846**

Dear Commission on POST:

We write on behalf of the State of California's Racial and Identity Profiling and Advisory Board (RIPA Board) to provide public comment on the Commission's proposed regulations implementing Assembly Bill (AB) 846 noticed on September 10, 2021. Specifically, we write to provide recommendations regarding the assessment of explicit bias of a peace officer candidate's social media accounts and revisions to proposed amendments to POST Commission Regulations 1953(g)(1) and 1955(d)(3), discussed fully below.

1. Recommendation to Require Investigators and Evaluators to Assess Peace Officer Candidates' Social Media Accounts For Explicit Bias

The Board proposes an amendment to Section 1953, subdivision (g)(1) and Section 1955, subdivision (d)(3) to require background investigators and psychological evaluators to specifically assess candidates for peace officer employment for bias in their public-facing social media accounts. While the proposed Bias Assessment Framework includes "social media postings" as an example of "Aggravating or Facilitative Factors" that may be considered when determining whether an applicant has exhibited biased behavior, the proposed regulation does not specifically require investigators and evaluators to search and evaluate an applicant's social media profile—including prior postings, affiliations, and conduct reflecting agreement or opposition to others' postings. We believe that such an investigation and review is both necessary to accomplish the purposes of AB 846 as envisioned by the Legislature in its adoption.

Assembly Bill 846 directed POST to develop regulations and screening material that incorporated procedures for identifying both explicit and implicit bias. (See Penal Code 1031.3, subd. (a).) Advocates of the legislation cited the firing of four San Jose police officers engaged in an "online ring of hate" on Facebook as an example of the type of racism and bigotry that needs to be screened out of policing agencies.<sup>1</sup> Social media has been a rich source for finding explicit biases among law enforcement nationwide. As the RIPA Board identified in its 2021 report, the Plain View Project, an advocacy group formed in 2016, found thousands of troubling Facebook posts that included racist or otherwise offensive language, leading several departments nationwide to conduct investigations of their officers.<sup>2</sup> Of the

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<sup>1</sup> See Assembly Floor Analysis, August 29, 2020, [https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill\\_id=201920200AB846](https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201920200AB846)

<sup>2</sup> The Plain View Project, About the Project <<https://www.plainviewproject.org/about>> (as of Dec. 14, 2020), and see Andone, This group found thousands of offensive Facebook comments by police. Here's what you should

Facebook accounts that Plain View researchers could identify as belonging to officers or retired officers, about 1 in 5 of the current officers and 2 in 5 of the retired officers made public posts or comments that included biased language or otherwise undermined confidence or trust in law enforcement by using dehumanizing language or praising violence.<sup>3</sup> California agencies, including the Los Angeles Sheriff's Department and the San Francisco Police Department, have had to address biased social media posts by deputies and officers.<sup>4</sup>

In these investigations, researchers have found that this behavior by law enforcement on social media may be consistent with those officers' actions towards the public they serve. For instance, the Plain View project found that "[o]f 327 officers in Philadelphia who posted troubling content, more than a third — 138 officers — appeared to have had one or more federal civil rights lawsuits filed against them, [. . . and while the] Facebook posts were not specifically connected to incidents that were the subject of lawsuits . . . in some cases the officers were supporting conduct, like using Tasers to subdue suspects, that could mirror the kind of conduct raised in complaints."<sup>5</sup> But even without direct evidence of officers engaging in conduct against the community that mirrors the biased views espoused in their social media, the mere fact that officers endorse such views elicits deeper concerns of affiliations with white supremacist groups and extremist groups<sup>6</sup>, as well as concerns that officers are carrying out their duties while driven by bigotry.<sup>7</sup>

Moreover, given limitations in the available tools for identifying and screening implicit biases that may manifest in disparate treatment of individuals based on racial, religious, or other identities, POST should ensure that agencies are relying upon all available measures of bias—particularly those that have already been observed as strongly correlated to biased policing and community harm.

For these reasons, the RIPA Board recommends that the regulations require background investigators and evaluators to specifically assess peace officer candidates' public-facing social media accounts for evidence of bias.

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know, CNN.com (June 20, 2019) < <https://www.cnn.com/2019/06/20/us/plain-view-project-what-is/index.html>> (as of Dec. 14, 2020)

<sup>3</sup> <https://www.injusticewatch.org/interactives/cops-troubling-facebook-posts-revealed/>

<sup>4</sup> Chabria, When cops abuse social media, the results are explosive: 'One post can become a movement,' Los Angeles Times (Oct. 13, 2020) <<https://www.latimes.com/california/story/2020-10-13/cops-social-media-dangerous-combo-era-racialreckoning>> [describing a Facebook post by a Los Angeles County Sheriff's Captain, stating that Andres Guardado, a Salvadoran American killed by a deputy in Gardena, "chose his fate"] (as of Dec. 14, 2020); Fuller, San Francisco Police Chief Releases Officers' Racist Texts, N.Y. Times (April 29, 2016) < <https://www.nytimes.com/2016/04/30/us/san-francisco-police-orders-officers-to-complete-anti-harassment-class.html>> (as of Dec. 14, 2020).

<sup>5</sup> <https://www.injusticewatch.org/interactives/cops-troubling-facebook-posts-revealed/>

<sup>6</sup> 2 Federal Bureau of Investigation, Counterterrorism Policy Directive and Policy Guide (April 1, 2015) 89 <<https://assets.documentcloud.org/documents/3423189/CT-Excerpt.pdf>> (as of Dec. 14, 2020); Levin, White supremacists and militias have infiltrated police across US, report says, The Guardian (Aug. 27, 2020) < <https://www.theguardian.com/usnews/2020/aug/27/white-supremacists-militias-infiltrate-us-police-report>> (as of Dec. 14, 2020). See also <https://www.npr.org/2021/10/06/1043651361/oath-keepers-california-sheriff-chad-bianco-january-6-us-capitol> (discovery that Riverside County Sheriff was a dues-paying member of the racist, extremist group Oath Keepers).

<sup>7</sup> ABC7 News, 4 San Jose police officers put on leave amid investigation into alleged racist Facebook posts (June 28, 2020) <https://abc7news.com/san-jose-police-department-report-news-sjpd-facebook/6275266/> (as of Dec. 14, 2020).

2. Recommendation to Amend Proposed Section 1953, subdivision (g)(1) Documentation and Reporting: Background Narrative Report/Investigator Requirements

Section 1953, subdivision (g)(1) requires “that the background investigator summarize the background investigation results in a narrative report that includes sufficient information for the reviewing authority to extend, as appropriate, a conditional offer of employment. The report shall reference the Background Investigation Dimensions and include any findings of biased behaviors and/or bias-relevant traits and attributes per the Bias Assessment Framework.”<sup>8</sup> While the regulation attempts to provide some guidance to the investigator in assessing bias and making determinations for employment suitability, it does not require the investigator to provide clear investigative findings with respect to the targeted constructs: biased behaviors, biased attitudes, and biased relevant traits and attributes.

The Board recommends amending Section 1953, subd. (g)(1), Background Narrative Report/Investigator Requirements, to explicitly require the investigator to report findings of the investigation based upon each targeted construct (behavior, attitudes, traits and attributes) of the candidate. Reported findings should clearly explain the investigator’s assessment of the candidate for each construct while incorporating and accounting for sources used, evidence used, and factors considered, among others. This would provide greater transparency in the assessment process, and greater detail for the psychological evaluator, whose evaluation commences after the conditional offer of employment.<sup>9</sup> The evaluator, who determines whether a candidate’s biases might adversely affect their behavior as a peace officer could then refer back to the constructs and investigative source(s) used in determining a finding for bias if there are questions related to the background investigation.<sup>10</sup> This process would improve public accountability, ensure the clarity of the findings record for review and department educational purposes, increase effectiveness of the background investigator process, and consequently lead to more transparent and evidence-based public service processes.<sup>11</sup>

3. Recommendation to Amend Proposed Section 1955, subdivision (d)(3) Psychological Screening Procedures and Evaluation Criteria Requirements

Section 1955, subdivision (d)(3) requires that “when evaluating a peace officer candidate for explicit and implicit bias against race or ethnicity, gender, nationality, religion, disability, or sexual orientation that might adversely affect the exercise of the powers of a peace officer, psychological evaluators shall use the Bias Assessment Framework .... [to] assess biased behaviors, biased attitudes and bias-relevant traits and attributes.”<sup>12</sup> Additionally, the requirement gives evaluators discretion<sup>13</sup> as to which data sources to

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<sup>8</sup> [https://post.ca.gov/Portals/0/post\\_docs/regulationnotices/2021/2021-38\\_TPR.pdf](https://post.ca.gov/Portals/0/post_docs/regulationnotices/2021/2021-38_TPR.pdf), p. 2

<sup>9</sup> <https://govt.westlaw.com/calregs/Document/I92ABA5B682E14626A39750AFF7D0BBCB?originationContext=document&transitionType=StatuteNavigator&needToInjectTerms=False&viewType=FullText&contextData=%28sc.Default%29&bhcp=1>

<sup>10</sup> Ibid

<sup>11</sup> Cordner, Gary, National Institute of Justice, Evidence-Based Policing In 45 Small Bytes, May 2020, p. 6

<sup>12</sup> [https://post.ca.gov/Portals/0/post\\_docs/regulationnotices/2021/2021-38\\_TPR.pdf](https://post.ca.gov/Portals/0/post_docs/regulationnotices/2021/2021-38_TPR.pdf)

<sup>13</sup> The Board is not commenting on the fact that the evaluator has discretion here and believes that providing the evaluator with discretion is reasonable.

use for the assessments<sup>14</sup>; however, the regulations do not require the evaluator to provide clear findings with respect to each construct. Moreover, given the discretion provided to evaluators to determine which data sources or facts may be relied upon in making their final determination, a review of the currently-required documentation will provide little insight to how the evaluators are making crucial decisions.

The Board recommends requiring the evaluator to report detailed findings of the evaluation based upon each targeted construct of the candidate. Such findings would clearly explain the evaluator's assessment of biased behavior, biased attitudes, and biased traits, including identification of sources, evidence used, and other factors relied upon, and an explanation of how they contributed the evaluator's analysis and decision. This would significantly improve the transparency of this screening process, and would provide a basis to further develop the screening tools over time that the Legislature has directed POST to create.

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<sup>14</sup> [https://post.ca.gov/Portals/0/post\\_docs/regulationnotices/2021/Bias\\_Assessment\\_Framework.pdf](https://post.ca.gov/Portals/0/post_docs/regulationnotices/2021/Bias_Assessment_Framework.pdf), see footnote no. 2