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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

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**Bill No:** AB 2504                      **Hearing Date:** June 19, 2018  
**Author:** Low  
**Version:** May 25, 2018  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** EC

**Subject:** *Peace Officer Training: Sexual Orientation and Gender Identity*

## HISTORY

Source: Author

Prior Legislation: AB 953 (Weber), Chaptered 466, Statutes of 2015

Support: Equality California; Bay Area Municipal Elections Committee; Consumer Attorneys of California; California Public Defenders Association; Equal Rights Advocates; Indivisible Sacramento; Matthew Shepard Foundation; National Association of Social Workers, California Chapter; Out to Protect Inc.; Rainbow Chamber; Sacramento LGBT Community Center; San Jose Police Department; Transgender Community of Police & Sheriffs; individuals

Opposition: None known

Assembly Floor Vote: 53 - 22

## PURPOSE

*The purpose of this bill is to require the Commission on Peace Officer Standards and Training (POST) to develop a training course in basic training for law enforcement officers and dispatchers regarding sexual orientation and gender identity.*

*Existing law* requires all peace officers to complete an introductory course of training prescribed by POST, demonstrated by passage of an appropriate examination developed by POST. (Pen. Code § 832, subd. (a).)

*Existing law* authorizes POST, for the purpose of raising the level of competence of local law enforcement officers, to adopt rules establishing minimum standards related to physical, mental, and moral fitness and training that shall govern the recruitment of any peace officer in California. (Pen. Code § 13510, subd. (a).)

*Existing law* requires POST to establish and continually update a classroom training course relating to law enforcement interaction with elderly and dependents adults. The course must include training on the following subjects as they relate to elders and dependent adults (Pen. Code § 13515, subd. (a)(1)-(8)):

- 1) Recognition of abuse, neglect, fraud, physical abuse, psychological abuse;
- 2) Reporting requirements and procedures;
- 3) Fraud of elders and dependent adults; and
- 4) Roles of local adult protective services and public guardian offices.

*Existing law* states when updating training materials, POST must consult with the Bureau of Medi-Cal Fraud and Elder Abuse, local adult protective services offices, and other subject matter experts. (Pen. Code § 13515, subd. (b).)

*Existing law* requires that POST must consult with appropriate local and state organizations that have expertise on mental disabilities in order to develop a training course relating to law enforcement interactions with persons with mental disabilities. (Pen. Code § 13515.25.)

*Existing law* states requires that the training course consists of classroom instruction and interactive training methods on the following: cause and nature of mental disabilities, identifying indicators of mental disability, de-escalation techniques for possible dangerous situations involving the mentally disabled, and other specified subjects. (Pen. Code § 13515.27.)

*Existing law* requires POST to review the training course relating to persons with mental disabilities and to identify areas where additional training may be needed to effectively address incidents involving mentally disabled persons and persons with substance use disorders. (Pen. Code § 13515.26, subd. (a).)

*Existing law* requires the training to address issues related to stigma, be culturally relevant and appropriate, and include recognizing indicators of mental illness, use of force options and alternatives, mental health resources, as specified. (Pen. Code § 13515.26, subd. (c).)

*Existing law* requires POST to implement an instructional course for the training of law enforcement officers in handling domestic violence complaints and to develop guidelines focusing protection of the victim and enforcement of the law in domestic violence situations. (Pen. Code § 13519, subd. (a).)

*Existing law* states that, in establishing the course, POST shall consult with, among others, at least one representative of service providers serving the lesbian, gay, bisexual, and transgender community in connection with domestic violence. (Pen. Code, § 13519, subd. (f)(1).)

*Existing law* instructs POST to consult with experts and appropriate groups to develop and disseminate guidelines and training for specified peace officers about the racial and cultural differences among California citizens. The guidelines and training courses must focus on understanding racial, identity, and cultural differences and outline effective, noncombative methods when carrying out duties in diverse environments. (Pen. Code, § 13519.4, subd. (a) & (b).)

*Existing law* defines “racial or identity profiling” as the consideration of or reliance on an individual’s perceived race, age, religion, gender identity or expression, sexual orientation, or other specified trait, when deciding to subject the individual to a stop or in deciding upon the scope of law enforcement activities following a stop without individualized suspicion. (Pen. Code, § 13519.4, subd. (e).)

*Existing law* defines “sexual orientation” as, “heterosexuality, homosexuality, or bisexuality.” (Pen. Code § 422.56, subd. (h).)

*Existing law* defines “gender” as a person’s gender identity and gender expression. (Pen. Code § 422.56, subd. (c).)

*Existing law* defines ‘gender expression’ as a person’s gender-related appearance and behavior whether or not stereotypically associated with the person’s assigned sex at birth. (Pen. Code § 422.56, subd. (c).)

*This bill* requires POST to develop and implement a training course regarding sexual orientation and gender variant groups in this state.

*This bill* requires the basic training courses for officers and dispatchers to incorporate:

- 1) The terminology used to identify and describe sexual orientation and gender identity;
- 2) How to create an inclusive workplace within law enforcement for sexual orientation and gender variant groups;
- 3) Important moments in history related to sexual orientation and gender variant groups and law enforcement; and
- 4) How law enforcement can respond effectively to domestic violence and hate crimes involving sexual orientation and gender variant groups.

*This bill* authorizes law enforcement officers, administrators, executives, and dispatchers to participant in supplementary training that includes all of the topics describes in this section. The supplementary training shall fulfill POST requirements for continuing professional training and shall include facilitated discussions and learning activities, including scenario training exercises. Additional training courses to update this instruction shall be established as deemed necessary by POST.

## COMMENTS

### 1. Need for This Bill

The author states:

AB 2504 will better prepare peace officers in their response to incidents that involve LGBT individuals, and help foster a workplace for law enforcement in which LGBT individuals feel comfortable and valued. It is important to provide history and proper terminology regarding gender identity and sexual orientation, including how they relate to race, culture and religion. Promotion of an LGBT inclusive workplace while including best practices to properly respond to LGBT specific hate crimes and domestic violence are key elements to protecting one of California’s most vulnerable communities.

Currently, peace officers undergo training with regard to cultural and racial differences, including 24 hours of cultural diversity and 8 hours of disability awareness for entry-level law enforcement trainees. These are minimum standards that are set by the Commission on Peace Officer Standards and Training (CPOST)

and administered by local law enforcement training academies. The trainings are intended to increase the cultural sensitivity of the peace officers, as well as to make them more effective in their interaction with groups and individuals of different cultural backgrounds. However, California POST does not require any specific training on sexual orientation and gender identity minority groups for entry-level peace officers and dispatchers and there is no in-service or on-going training requirement. Peace officers are not trained in how to respond to incidents in which the citizens involved are LGBT. The California POST Learning Domain 42 “Cultural Diversity” Student Workbook makes minimal mention of LGBT co-workers and citizens.

According to the Department of Justice, hate crimes involving LGBT people continue to be the second most common bias motivation. Gay men and transgender women are particularly vulnerable and it has been reported that hate crimes based on sexual orientation are rising in California.

Improving law enforcement’s ability to communicate, recognize and serve members of the LGBT community will improve trust in California’s law enforcement.

## 2. LGBTQIA+ Community and Law Enforcement

According to a 2016 demographic survey, 10 million Americans identify as lesbian, gay, bisexual, transgender, queer, intersex, asexual (LBTQIA+).<sup>1</sup> A 2015 study reported 1,334,000 LGBTQIA+ adults living in California.<sup>2</sup> These identities are higher amongst women, Asians, and Latinx populations. The reported numbers are often underestimates as sexual orientation disclosure is still highly stigmatized.

While law enforcement’s relationship with the LGBTQIA+ community has improved over time, discrimination and harassment are still ongoing and pervasive issues. Discrimination fosters distrust and inhibits effective policing in the LGBTQIA+, transgender, and gender non-conforming community. The U.S. has a significant history of law enforcement profiling, victimization, and mistreatment of this community. A 2014 national survey reported that 73% of LGBTQIA+ individuals and people living with HIV have had face-to-face contact with police in the past five years.<sup>3</sup> Of those respondents, 21% reported hostile attitudes from officers, 14% reported verbal assault by police, 3% reported sexual harassment, and 2% reported physical assault at the hands of law enforcement officers.<sup>4</sup> LGBTQIA+ people of color, individuals under 30, low-income folks, and transgender respondents were much more likely to report police misconduct or harassment.<sup>5</sup>

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<sup>1</sup> Gallup Inc, “In U.S., More Adults Identifying as LGBT,” Gallup.com, accessed June 7, 2018, <http://news.gallup.com/poll/201731/lgbt-identification-rises.aspx>.

<sup>2</sup> “The LGBT Divide in California: A Look at the Socioeconomic Well-Being of LGBT People in California,” 2015, <https://williamsinstitute.law.ucla.edu/wp-content/uploads/California-LGBT-Divide-Jan-2016.pdf>.

<sup>3</sup> Christy Mallory, Amira Hasenbush, and Brad Sears, “Discrimination and Harassment by Law Enforcement Officers in the LGBT Community” (The Williams Institute, March 2015), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Discrimination-and-Harassment-in-Law-Enforcement-March-2015.pdf>.

<sup>4</sup> Mallory, Hasenbush, and Sears.

<sup>5</sup> James Copple and Patricia Dunn, “Gender, Sexuality, and 21st Century Policing: Protecting the Rights of the LGBTQ+ Community” (Office of Community Oriented Policing Services., 2017), <https://ric-zai-inc.com/Publications/cops-w0837-pub.pdf>.

### 3. Hate Crimes

While tensions exist between law enforcement and LGBTQIA+ communities, this population also heavily relies on law enforcement due to the frequency that they are subject to hate crimes.

Referred to in some jurisdictions as "bias crimes," hate crimes are generally defined as crimes that are, "committed not out of animosity toward the victim as an individual, but out of hostility toward the group to which the victim belongs".<sup>6</sup> Hate crime perpetrators target their victims based on discrimination against immutable characteristics such as *actual or perceived* age, color, disability, gender, gender identity, national origin, race, sex, and sexual orientation.

Today, 49 states have hate crime statutes that vary in regard to the groups protected under hate crime laws.<sup>7</sup> The Department of Justice (DOJ) published a 2016 study on the prevalence of hate crimes. From 2007 to 2016, hate crimes have overall decreased by 34.7%. However, there was an 11.2% increase in number of hate crime events from 2015 to 2016 or 837 to 931 cases respectively.

Sexual orientation bias driven hate crimes comprise of 22.5% of all hate crimes. In 2016, 64.5% of hate crimes were violent crime offenses and 35% were property crime offenses.<sup>8</sup> However, these estimates are likely underreported because of the general absence of law enforcement training courses that are concentrated on these demographics.<sup>9</sup> Lack of trust due to fear of discrimination, harassment, and violence likely discourages these communities to come forward and report crimes they have been a victim of.

### 4. Violence against the Transgender Community

In California, a 2017 survey reported is about 92,000 transgender adults.<sup>10</sup> Transgender individuals often face more conflict, misunderstanding, and negative interactions than their cisgender counterparts. Cisgender is defined as a person whose sense of personal identity and gender corresponds with their birth sex.<sup>11</sup>

A national survey found that 58% of transgender people who interacted with the police in the last year reported biased treatment, including 20% experiencing verbal harassment, 4% experiencing physical assault, and 3% experiencing sexual assault by officers. Significantly, a majority of respondents or 57% said they would be somewhat or very uncomfortable asking for help from law enforcement.<sup>12</sup>

In the U.S., there were at least 23 deaths in 2016, 28 deaths in 2017, and so far, there have been 12 deaths of transgender people due to fatal violence.<sup>13</sup> The victims are mainly women of color who were killed by acquaintances, partners and strangers. While some cases involve clear anti-

<sup>6</sup> Beverly A. McPhail and Diana M. DiNitto, "Prosecutorial Perspectives on Gender-Bias Hate Crimes," *Violence Against Women* 11, no. 9 (September 1, 2005): 1162–85, <https://doi.org/10.1177/1077801205277086>.

<sup>7</sup> "Hate Crime," National Institute of Justice, accessed April 27, 2018, <https://www.nij.gov:443/topics/crime/hate-crime/pages/welcome.aspx>.

<sup>8</sup> "State of California Department of Justice - OpenJustice," accessed April 27, 2018, <https://openjustice.doj.ca.gov/2016/hate>.

<sup>9</sup> Mallory, Hasenbush, and Sears, "Discrimination and Harassment by Law Enforcement Officers in the LGBTQ Community."

<sup>10</sup> "Demographics and Health of California's Transgender Adults," *Williams Institute* (blog), October 30, 2017, <https://williamsinstitute.law.ucla.edu/demographics/health-trans-adults-ca/>.

<sup>11</sup> "Definition of CISGENDER," accessed June 7, 2018, <https://www.merriam-webster.com/dictionary/cisgender>.

<sup>12</sup> Copple and Dunn, "Gender, Sexuality, and 21st Century Policing: Protecting the Rights of the LGBTQ+ Community."

<sup>13</sup> Human Rights Campaign, "Violence Against the Transgender Community in 2017," Human Rights Campaign, accessed June 7, 2018, <https://www.hrc.org/resources/violence-against-the-transgender-community-in-2017/>.

transgender bias, in other cases, being transgender may have put them at risk through employment, housing, healthcare barriers that force them into homelessness and other susceptible situations.<sup>14</sup>

## 5. Cultural Competency in Law Enforcement

There is a need for cultural competency training in law enforcement because not only do officers frequently interact with this population, but LGBTQIA+ individuals may be officers themselves. This bill would require peace officers to undergo a training course on the culture and experiences of sexual orientation and gender identity groups and would advise them on how to respond effectively to incidents, such as hate crimes, involving this population.

## 6. Argument in Support

According to Equality California:

The overrepresentation of LGBTQ people who have contact with the criminal justice system is a direct result of disparities the community suffers, which are magnified for people who are also members of other marginalized communities. Young men of color who are also members of the LGBTQ community are at a particularly high risk of substance use disorders, which further increases their likelihood of contact with the criminal justice system. Another all-too common occurrence reported by transgender people, transgender women of color in particular, is the increased profiling they experience simply for living openly and authentically.

Research has shown that improving peace officers' ability to communicate with and service members of the LGBTQ community will increase trust in law enforcement. AB 2504 will not only educate peace officers about the LGBTQ community and build more inclusive working environments; it will also create new opportunities for dialog between law enforcement officers and the marginalized communities they serve.

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<sup>14</sup> Campaign.