
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair
2021 - 2022 Regular

Bill No: AB 2229 **Hearing Date:** May 31, 2022
Author: Luz Rivas
Version: February 15, 2022
Urgency: Yes **Fiscal:** No
Consultant: AB

Subject: *Peace officers: minimum standards: bias evaluation*

HISTORY

Source: Author

Prior Legislation: AB 1096 (L. Rivas), Ch. 296, Stats. of 2021
AB 846 (Burke), Ch. 322, Stats. of 2020

Support: California Attorneys for Criminal Justice; California Public Defenders Association

Opposition: Real Impact

Assembly Floor Vote: 68 - 0

PURPOSE

The purpose of this bill is to correct the inadvertent deletion of the requirement that peace officers be found to be free from any physical, emotional, or mental condition, including 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.

Existing law requires that each class of public officers or employees declared by law to be peace officers shall meet all of the following minimum standards:

- Be a citizen of the United States or a permanent resident who is eligible for and has applied for citizenship, except as specified;
- Be at least 18 years of age;
- Be fingerprinted for purposes of search of local, state, and national fingerprint files to disclose a criminal record;
- Be of good moral character, as determined by a thorough background investigation;
- Be a high school graduate, pass the General Education Development Test or other high school equivalency test or have attained a two-year, four-year, or advanced degree from an accredited college or university, as specified;

- Be found to be free from any physical, emotional or mental condition that might adversely affect the exercise of the powers of a peace officer. . (Gov. Code, § 1031(a)-(f).)

Existing law specifies that physical condition shall be evaluated by a licensed physician and surgeon. (Gov. Code §1031(f)(1).)

Existing law specifies that emotional and mental condition shall be evaluated by either a physician and surgeon with specified credentials and experience or a psychologist with specified experience. (Gov. Code §1031(f)(2).)

Existing law provides that the physician and surgeon or psychologist responsible for evaluating emotional and mental condition shall have met any applicable education and training procedures set forth by the California Commission on Peace Officers Standards and Training (POST) designed for the conduct of pre-employment psychological screening of peace officers. (Gov. Code §1031(f)(2)(B).)

Existing law specifies that the above minimum standards shall not be construed to preclude the adoption of additional higher standards, including age. (Gov. Code §1031(g).)

This bill requires that prospective officers' evaluations for physical, emotional and mental fitness including that they be found free of bias against race or ethnicity, gender, nationality, religion, disability, or sexual orientation.

This bill provides that the requirement the high school educational requirement imposed on a prospective officer may be satisfied by graduating from a high school accredited by an organization holding full membership in Cognia.

COMMENTS

1. Need for This Bill

According to the Author:

In 2021, the original drafting version of AB 1096 was based on the old version of Gov't Code Section 1031. As such, AB 1096 unintentionally eliminated the bias requirement that AB 846 created in 2020. Upon further review, it seems AB 1096 was introduced with an outdated version of Govt. Code Section 1031, which did not include the additional language from AB 846. Therefore, AB 1096 inadvertently reverted Govt. Code 1031 to the pre-AB 846 version.

2. The Inadvertent Deletion of AB 846 (Burke, 2019)

Existing law prior to January 2021 provided that every prospective peace officer must undergo an evaluation and "be found to be free from any physical, emotional or mental condition that might adversely affect the exercise of the powers of a peace officer."¹ In September 2020,

¹ Government Code §1031(f), prior to January 1, 2021.

Governor Newsom signed AB 846 (Burke), which was codified at Ch. 322, Statutes of 2020 and amended that provision to require peace officer evaluations to include a determination that the prospective officer is free from any physical emotional or mental condition, “including bias against race or ethnicity, gender, nationality, religion, disability or sexual orientation.” AB 846 went into effect on January 1, 2021.

During the 2021 legislative session, the Author of this measure introduced AB 1096 (L. Rivas, Ch. 296, Stats. of 2021), which eliminated the term “alien” from all relevant state codes. According to the Author, “using the outdated term ‘alien’ to describe a person is dehumanizing. Although it is not an explicit racial slur, it has become a code word for bigotry against immigrant communities. Using terms like “alien” shapes people’s opinions and are directly linked to harmful actions.” AB 1096 replaced the term “alien” with more inclusive and linguistically neutral legal terms. Among the provisions of law amended by AB 1096 was Government Code §1031 regarding minimum standards for peace officers, which includes evaluation provision discussed above. Unfortunately, however, AB 1096 as drafted and introduced erroneously included the *prior* version of Government Code 1031, as it read prior to the changes enacted by AB 846. Thus, when AB 1096 was chaptered, it inadvertently reverted the provision regarding officer evaluations to its pre-AB 846 language, deleting that measure’s bias requirement. This bill merely addresses that error by adding the bias requirement back into Government Code §1031, and does not make any other substantive changes.

3. Development of Bias Requirements by POST

In addition to requiring an evaluation of bias for prospective peace officers, AB 846 required POST to update its regulations and associated screening materials related to that evaluation and incorporate content regarding the identification of explicit and implicit bias.² Despite AB 1096’s inadvertent deletion of the bias requirement, this work has been ongoing.³ This bill includes an urgency clause to ensure that POST’s regulatory updates are implemented as quickly as possible.

4. Related Legislation

Senate Bill 960 (Skinner) deletes provisions of law requiring peace officers to either be a citizen of the United States or lawful permanent resident of the United States who is actively applying for citizenship. SB 960 amends the same code section as this bill, and is currently pending committee referral in the Assembly.

5. Argument in Support

According to the California Public Defenders Association:

Members of law enforcement are charged with protecting the constitutional rights of all people and to treat all people with respect, regardless of race, color, ethnicity, national origin, age, religion, gender identity or expression, sexual orientation, mental or physical ability or socio-economic status. It is crucial for members of law enforcement to carry out their duties in a manner free from bias to eliminate any real and/or perceived perception of biased policing. Police action that is biased is illegal and violates a person’s constitutional rights. Biased policing is unsafe, unjust and

² Govt. Code §1031.3. This section was not inadvertently deleted by AB 1096.

³ See POST’s most recent update here: https://post.ca.gov/Portals/0/post_docs/bulletin/2021-22.pdf

ineffective. It also alienates the public, fosters distrust of police in the community and undermines legitimate law enforcement efforts by other officers. AB 2229 is another step in the right direction to help law enforcement agencies make better determinations as they consider whether to hire a potential candidate and to prevent unfit candidates from entering policing.

6. Argument in Opposition

According to Real Impact:

This proposed legislation will require peace officers to pass an evaluation that would include bias against ‘race or ethnicity, gender, nationality, religion, disability, or sexual orientation.’ The term ‘bias’ is not defined in the text, therefore placing those who adhere to a Biblical view of gender, religion, and sexual orientation at high risk of discrimination and can be used as litmus test for advancement in the workplace. These evaluations often bring about division and frustration, which is not what officers need at this time in which they are being harshly criticized by politicians and public officials.

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