
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
2019 - 2020 Regular

Bill No: AB 846 **Hearing Date:** July 31, 2020
Author: Burke
Version: June 25, 2020
Urgency: No **Fiscal:** Yes
Consultant: GC

Subject: *Public Employment: Public Officers or Employees Declared by Law to be Peace Officers*

HISTORY

Source: Author

Prior Legislation: SB 230 (Caballero) Chapter 285, Stats. 2019

Support: California Attorney for Criminal Justice; California Public Defenders Association; California State Sheriffs' Association; City of Thousand Oaks; Los Angeles County Sheriff's Department; Silicon Valley Leadership Group

Opposition: California Statewide Law Enforcement Association

Assembly Floor Vote: Not relevant

PURPOSE

The purpose of this legislation is to (1) require that evaluations of peace officers include an evaluation of bias against race or ethnicity, gender, nationality, religion, disability, or sexual orientation; and (2) require every department or agency that employs peace officers to review their job descriptions and deemphasize the paramilitary aspects of employment and place more emphasis on community interaction and collaborative problem solving.

Existing law requires that each class of peace officers must meet the following minimum standards: (Gov. Code § 1031.)

- 1) A citizen or permanent resident who is eligible and has applied for citizenship.
- 2) At least 18-years of age.
- 3) Of good moral character, as determined through a background investigation.
- 4) A high-school graduate, or a specified equivalent.
- 5) Free from any physical, emotional, or mental condition that might adversely affect the exercise of the powers of a peace officer.

Existing law specifies that emotional and mental condition of peace officer candidates shall be evaluated by either of the following: (Gov. Code § 1031; subd. (f)(1)&(2).)

- 1) A physician who holds a valid license and has successfully completed a postgraduate residency education program in accredited psychology with at least the equivalent of five full-time years of experience in the diagnosis and treatment of emotional and mental disorders.
- 2) A licensed psychologist who has at least the equivalent of five full-time years of experience in the diagnosis and treatment of emotional and mental disorders, including the equivalent of three full-time years accrued post-doctorate.

Existing law requires the Commission on Peace Officer Standards and Training (POST) to develop and disseminate guidelines and training for all peace officers in California on the racial and cultural differences. The course or courses of instruction and the guidelines shall stress understanding and respect for racial, identity, and cultural differences, and development of effective, noncombative methods of carrying out law enforcement duties in a diverse racial, identity, and cultural environment. (Pen. Code, § 13519.4 (a).)

Existing law establishes the course of basic training for peace officers shall include adequate instruction on racial, identity, and cultural diversity in order to foster mutual respect and cooperation between law enforcement and members of all racial, identity, and cultural groups. In developing the training, the commission shall consult with appropriate groups and individuals having an interest and expertise in the field of racial, identity, and cultural awareness and diversity. (Pen. Code, § 13519.4 (b).)

Existing law states that every peace officer in this state shall participate in expanded training as prescribed and certified by the POST. (Pen. Code, § 13519.4 (g).)

Existing law establishes that the curriculum shall be evidence-based and shall include and examine evidence-based patterns, practices, and protocols that make up racial or identity profiling, including implicit bias. This training shall prescribe evidence-based patterns, practices, and protocols that prevent racial or identity profiling. In developing the training, the commission shall consult with the Racial and Identity Profiling Advisory Board. The course of instruction shall include, but not be limited to, significant consideration of each of the following subjects:

- 1) Identification of key indices and perspectives that make up racial, identity, and cultural differences among residents in a local community.
- 2) Negative impact of intentional and implicit biases, prejudices, and stereotyping on effective law enforcement, including examination of how historical perceptions of discriminatory enforcement practices have harmed police-community relations and contributed to injury, death, disparities in arrest detention and incarceration rights, and wrongful convictions.
- 3) The history and role of the civil and human rights movement and struggles and their impact on law enforcement.
- 4) Specific obligations of peace officers in preventing, reporting, and responding to discriminatory or biased practices by fellow peace officers.
- 5) Perspectives of diverse, local constituency groups and experts on particular racial, identity, and cultural and police-community relations issues in a local area.
- 6) The prohibition against racial or identity profiling. (Pen. Code, § 13519.4 (h)(1)-(6).)

Existing law provides that once the initial basic peace officer training is completed, specified peace officers who adhere to the standards approved by the POST shall be required to complete a refresher course on racial and identity profiling, including implicit bias, every five years

thereafter, or on a more frequent basis if deemed necessary, in order to keep current with changing racial, identity, and cultural trends. (Pen. Code, § 13519.4 (i).)

Existing law establishes the Racial and Identity Profiling Advisory Board (RIPA) for the purposes of eliminating racial and identity profiling, and improving diversity and racial and identity sensitivity in law enforcement. Every year RIPA shall analyze law enforcement training and issue a report that provides RIPA's analysis. (Pen. Code, § 13519.4 (j)(3)(B)(E).)

This bill requires that prospective officers' evaluations for mental fitness include bias against race or ethnicity, gender, nationality, religion, disability, or sexual orientation.

This bill would require, by January 1, 2022, for POST to study, review, and update regulations and screening materials to identify explicit and implicit bias against race or ethnicity, gender, nationality, religion, disability, or sexual orientation related to emotional and mental condition evaluations.

This bill requires that local law enforcement agencies shall review their job descriptions used to recruit and hire peace officers and shall make changes that emphasize community-based policing, familiarization between law enforcement and community residents, and collaborative problem solving, and de-emphasize the paramilitary aspects of the job.

This bill specifies that the recruitment provisions change is not intended to alter the required duties of any peace officer.

This bill provides that the Legislature finds and declares that changes to these job descriptions are necessary to allow peace officers to feel like the public can trust law enforcement and to implement problem-solving policing and intelligence-led policing strategies in contrast with reactive policing strategies.

COMMENTS

1. Need for This Bill

According to the author:

The goal of this bill is to screen for both implicit and explicit biases during the hiring process, and focus on more community-oriented practices in law enforcement by reassessing job descriptions and recruitment practices. This can foster a more communal and less militaristic and aggressive approach to policing.

AB 846 will require the Commission on Peace Officer Standards and Training to study and update regulations and screening materials to identify explicit and implicit bias against race or ethnicity, gender, nationality, religion, disability, or sexual orientation related to emotional and mental condition evaluations of peace officers. Additionally, the minimum standards for each peace officer will be amended in order to require that each individual must be free from explicit and implicit bias when evaluating their mental condition through their training and examination.

Implicit bias among law enforcement is especially dangerous because of the positions of power they hold. We already recognize the disparities in stop, search and arrest rates across demographic groups. The latest murders of black men by white police officers across our nation are being amplified as needed calls for reform. It is therefore critical that we require screening of bias during the hiring process and recognize how to take steps to counteract their influence. We must make sure that officers are trained and acting on facts, not biases.

This language will also require a review of the job descriptions used in the recruitment and hiring of law enforcement officers and require changes that de-emphasize the paramilitary aspects of the job in order to place more emphasis on community interaction and collaborative problem solving. The objective is to move away from militaristic focused job descriptions in an effort to attract a wider range of applicants and promote a greater focus on community involvement.

Recruitment can improve if the description of these jobs are re-imagined. We have seen a demand for systemic change within law enforcement and part of that task includes changing the culture, which can begin with the way we recruit, evaluate, and re-frame positions for potential applicants. There needs to be better trust and coordination between the police and the communities they are hired to protect and serve. Our justice system is based around the idea of fairness and impartiality. Working to bring in a wider applicant pool for law enforcement positions while simultaneously screening for biases will help reform the system as it currently exists and move us in the direction of equity.

2. Commission on Peace Officer Standards and Training (POST)

The Commission on Peace Officers Standards and Training (POST) was established by the Legislature in 1959 to set minimum selection and training standards for California law enforcement. POST develops and implements various courses to train peace officers, including both basic and continuing professional training. Peace officer basic training includes a minimum of 664 hours of POST-developed training and testing in 42 separate areas of instruction. According to POST's website, most POST-certified basic training academies exceed the 664 minimum hours by 200 or more hours.

3. Racial Profiling and Bias Training by POST

According to Section 13519.4 (f) of the California Penal Code, "A peace officer shall not engage in racial or identity profiling." Peace officers are encouraged to not engage in racial or identity profiling through various POST courses but this has not resulted in less racial profiling. The LA Times reported, "California's attorney general says 157 people died during encounters with police in the state last year [2016]...Forty-two percent of the civilians involved were Latino. Although black people make up just 6% of the state's population, according to the most recent Census data, they represented nearly 20% of the use-of-force and shooting cases last year. More than half of the officers involved were white." In the 2019 Racial and Identity Profiling Advisory Board (RIPA) report, in 2017 there were 741 civilians involved in use of force incidents with Latino civilians comprising of 43.9% and Black civilians comprising of 19.3%.

The 2019 RIPA report had also found that in 2018 several of the trainings did not meet all of the curriculum requirements. The Board is currently working with POST to recreate this training to

better meet the requirements. RIPA's recommendations strongly emulate AB 243. For example, RIPA also recommends more frequent trainings and inclusion of implicit bias training.

4. Recruitment and Evaluation of Officers

This bill takes a slightly different tact from previous legislation that focused on training of officers, and setting policy for local law enforcement agencies. The legislation herein approaches the issue by requiring that all local law enforcement agencies shift the advertisement and recruiting of officers away from the more militaristic aspects of the job and towards community interaction and problem solving. In addition, as a part of the screening process, this bill would require officers undergo an evaluation to determine whether they hold biases that could impact their ability to effectively and neutrally act in the role of a peace officer, and to handle the extraordinary responsibility that goes along with that highly-trusted role.

5. Argument in Support

According to the California Public Defenders Association:

While current law requires law enforcement officers in the state of California to meet current standards, including an evaluation for physical, emotional and mental fitness, AB 846 would require that evaluation to also include factors relating to explicit and implicit bias. Additionally, AB 846 would require the Commission on Peace Officer Standards and Training ["POST"] to study, review and update regulations and screening materials related to explicit and implicit bias. This is an urgently needed bill, which will save the lives of many people of California that have interactions with law enforcement officers.

The recent news coverage of bias-related incidents by law enforcement officers in California shows how critical a need there is for law enforcement officers to be screened and trained on implicit and explicit bias. Just yesterday, KRON4.com reported that the mayor of San Jose was calling for the firing of four San Jose police officers accused of making racist comments on Facebook in what he called "an online ring of hate." In a welcome surprise, San Jose Police Association President Paul Kelly condemned the officers, saying, "There is no place in our police department or our union for racists or bigots, or for those that enable them by not speaking up when they see those types of behaviors."

The passage of AB 846 would be a significant step towards protecting the people of California from biased law enforcement officers who have no place in our law enforcement agencies.

6. Argument in Opposition

According to California Statewide Law Enforcement Association:

While we certainly understand the author's position to require the Commission on Peace Officer Standards and Training (POST) to review and update regulations regarding explicit and implicit biases, necessary funding should be provided to POST to meet these new requirements. However, AB 846 also

requires departments and agencies that employ peace officers to change the job descriptions used in hiring those officers, which could have significant impacts to our job classifications, pay and benefits. Further, AB 846 implies peace officers do not have relationships within their communities and that officers do not implement problem-solving and intelligence-led policing. Peace officers are already highly trained in problem-solving and critical thinking, often having to make split second decisions to protect and serve the public, and risking their lives to ensure the safety of communities in California. Lastly, departments and agencies take particular care to ensure officers are communicating and building relationships within the communities they serve; AB 846 will do nothing to enhance community and police relations.

-- END --