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## SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

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**Bill No:** SB 449                      **Hearing Date:** April 18, 2023  
**Author:** Bradford  
**Version:** April 10, 2023  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** AB

**Subject:** *Peace officers: Peace Officer Standards Accountability Advisory Board*

### HISTORY

**Source:** Author

**Prior Legislation:** SB 2 (Bradford), Ch. 409, Stats. of 2021

**Support:** Unknown

**Opposition:** California Association of Highway Patrolmen

### PURPOSE

***The purpose of this bill is to impose limitations on the release of specified information in peace officer decertification proceedings and make other clarifying changes to the peace officer certification process established by Senate Bill 2 (Bradford, 2021, Ch. 409, Stats. of 2021.)***

*Existing law* provides that the people of the State of California have the right of access to information concerning the conduct of the people’s business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny. (Cal. Const. Art. 1, Sec. 3, subd. (b)(1).)

*Existing law* requires minimum training and moral character requirements for peace officers, as defined, while at the same time identifying certain disqualifying factors, including a felony conviction. (Penal Code Sections 830 *et seq.* and Government Code Sections 1029 and 1031.)

*Existing law* establishes the Commission on Peace Officer Standards and Training (POST) to set minimum standards for the recruitment and training of peace officers, develop training courses and curriculum, and establish a professional certificate program that awards different levels of certification based on training, education, experience, and other relevant prerequisites.

Authorizes POST to cancel a certificate that was awarded in error or fraudulently obtained; however, POST is prohibited from canceling a properly-issued certificate. (Penal Code Sections 830-832.10 and 13500 *et seq.*)

*Existing law* provides that no later than January 1, 2023, the Governor shall establish the Peace Officer Standards Accountability Advisory Board (the “Board.”) (Pen. Code §13509.6(a).)

*Existing law* establishes the Board's purpose, member composition, term length and limits, and compensation. (Pen. Code §13509.6(b) – (h).)

*Existing law* requires all members of the Board to complete a 40-hour decertification training course, as developed by POST, which shall include, but not be limited to, subjects regarding the decertification process, internal investigations, evidentiary standards, use of force standards and training, and local disciplinary processes.

*This bill* removes the requirement that the decertification course be 40 hours.

*Existing law* requires POST to establish a certification program for peace officers, as defined, and provides that basic, intermediate, advanced, supervisory, management, and executive certificates shall be established for the purpose of fostering professionalization, education, and experience necessary to adequately accomplish the general police service duties performed by peace officers. (Pen. Code § 13510.1(a), (b).)

*Existing law* provides that certificates shall be awarded on the basis of a combination of training, education, experience, and other prerequisites, as determined by POST, and specifies what POST shall recognize as acceptable college education in determining whether an applicant for certification has the requisite education. (Pen. Code § 13510.1(c).)

*Existing law* provides that persons who are determined by POST to be eligible peace officers may make application for the certificates, provided they are employed by an agency which participates in the post program. Any agency appointing an individual who does not already have a basic certificate as described in subdivision (a) and who is not eligible for a certificate shall make application for proof of eligibility within 10 days of appointment. (Pen. Code § 13510.1(d).)

*Existing law* gives POST the authority to suspend, revoke, or cancel any certification. (Pen. Code § 13510.1(f).)

*Existing law* provides that an agency that employs peace officers shall employ as a peace officer only individuals with current, valid certification, except that an agency may provisionally employ a person for up to 24 months, pending certification by POST, provided that the person has received certification and has not previously been certified or denied certification. (Pen. Code § 13510.1(g)(1).)

*Existing law* provides that, commencing January 1, 2023, any peace officer who does not possess a basic certificate and who is not yet or will not be eligible for a basic certificate, shall apply to POST for proof of eligibility. (Pen. Code § 13510.1(h)(2).)

*Existing law* defines "certification" as a valid and unexpired basic certificate or proof of eligibility issued by POST pursuant to Penal Code §13510.1. (Pen. Code § 13510.1(i).)

*This bill* provides that an agency may provisionally employ a person for up to 24, pending certification by POST, provided that person has received a proof of eligibility and has not been previously certified or denied certification or had their certification revoked.

*This bill* redefines “certification” to mean any and all valid and unexpired certificates issued pursuant to existing law, including basic, intermediate, advanced, supervisory, management and executive certificates or any proof of eligibility issued by POST.

*Existing law* provides that a certified peace officer shall have their certification revoked if the person is or has become ineligible to hold office as a peace officer pursuant to Government Code § 1029. (Pen. Code § 13510.8(a)(1).)

*Existing law* provides that a certified peace officer may have their certification suspended or revoked if the person has been terminated for cause from employment as a peace officer for, or has, while employed as a peace officer, otherwise engaged in, any serious misconduct, as specified. (Pen. Code § 13510.8(a)(2).)

*Existing law* provides that POST may initiate proceedings to revoke or suspend a peace officer’s certification for conduct that occurred before January 1, 2022 only for either of the following:

- Serious misconduct, as specified.
- If the employing agency makes a final determination regarding its investigation of the misconduct after January 1, 2022.

*Existing law* specifies that nothing prevents POST from considering the peace officer’s prior conduct and service record in determining whether revocation of certification is appropriate for serious misconduct.

*This bill* clarifies that nothing in existing law prevents POST from considering the peace officer’s prior conduct and service record in determining whether suspension is appropriate for serious misconduct.

*Existing law* establishes within POST a Peace Officer Standards Accountability Division (the “Division”), the responsibilities of which shall be to review investigations conducted by law enforcement agencies or any other investigative authority and to conduct additional investigations, as necessary, into serious misconduct that may provide grounds for suspension or revocation of a peace officer’s certification, present findings and recommendations to the board and POST, and bring proceedings seeking the suspension or revocation of certification of peace officers as directed by the board and POST. (Pen. Code § 13509.5(a), (b).)

*Existing law* provides that when, upon the completion of an investigation into serious misconduct, the Division finds reasonable grounds for revocation or suspension of a peace officer’s certification, it shall take the appropriate steps to promptly notify the peace officer involved, in writing, of its determination and reasons therefore, and shall provide the peace officer with a detailed explanation of the decertification procedure and the peace officer’s rights to contest and appeal. (Pen. Code § 13510.85(a)(1).)

*Existing law* sets forth rules and processes governing requests by peace officers to review of a determination made by the Board and POST, requires the Board to conduct public hearings, as specified, and directs POST to review recommendations made by the Board, as specified. (Pen. Code § 13510.85(a)(2)-(5).)

*Existing law* provides that POST shall return any determination requiring action to be taken against an individual's certification to the Division, which shall initiate proceedings for a formal hearing before an administrative law judge in accordance with the Administrative Procedure Act, as specified. (Pen. Code § 13510.85(a)(6).)

*Existing law* provides that the hearings of the Board and the review by POST under the above provisions, administrative adjudications, and any records introduced during those proceedings shall be public.

*This bill* provides that notwithstanding the above, if, after the initial review, the Division determines that the interest in public disclosure of certain confidential, sensitive, or private information in materials presented to the Board or POST is outweighed by legitimate interests in confidentiality, the Division, in its discretion may submit portions of materials containing that information under seal, and the relevant portions of those materials shall be examined by the Board and POST only in closed session. Following review of that material, the Board or POST may, by majority vote, choose to make that information available for public review, in part or in whole, or may order it to be released under terms and conditions that are deemed just and appropriate.

*Existing law* provides that, beginning January 1, 2023, any agency employing peace officers shall report to POST within 10 days, in a form specified by POST, any of the following events:

- The employment, appointment, or termination or separation from employment or appointment, by that agency, of any peace officer, as specified.
- Any complaint, charge, or allegation of conduct against a peace officer employed by that agency that could render a peace officer subject to suspension or revocation of certification.
- Any finding or recommendation by a civilian oversight entity, including a civilian review board, civilian police commission, police chief, or civilian inspector general, that a peace officer employed by that agency engaged in conduct that could render a peace officer subject to suspension or revocation of certification.
- The final disposition of any investigation that determines a peace officer engaged in conduct that could render a peace officer subject to suspension or revocation of certification.
- Any civil judgment or court finding against a peace officer based on conduct, or settlement of a civil claim against a peace officer or an agency based on allegations of officer conduct that could render a peace officer subject to suspension or revocation of certification (Pen. Code § 13510.9(a).)

*Existing law* provides that POST shall maintain information reported to it pursuant to the above requirement in a form determined by the commission, and in a manner that may be accessed by the subject peace officer, any employing law enforcement agency of that peace officer, any law enforcement agency that is performing a preemployment background investigation of that peace officer, or the commission when necessary for the purposes of decertification. (Pen. Code § 13510.9(e).)

*This bill* provides that if the commission determines that disclosure of information pursuant to Penal Code § 13510.9 may jeopardize an ongoing investigation, put a victim or witness at risk of any form of harm or injury, or may otherwise create a risk of any form of harm or injury that outweighs the interest in disclosure, the commission may withhold that information until the risk of harm is ended or mitigated so that the interest in disclosure is no longer outweighed by the interest in nondisclosure.

*This bill* sets forth legislative findings demonstrating the interest protected by the limitation on the right of access to the meetings of public bodies or the writings of public officials and agencies, and the need for protecting that interest.

## COMMENTS

### 1. Need for This Bill

According to the Author:

SB 2 was passed by the legislature and enacted into law in 2021. Most of the provisions of SB 2 went into effect on January 1, 2023. As law enforcement agencies have begun to submit information to the POST Commission and the Commission begins officer decertification proceedings, additional changes have been identified by POST in order to better clarify legislative intent and protect sensitive information regarding ongoing investigations.

SB 449 makes technical changes to the police decertification process enacted into law by SB 2 (Bradford, 2021) to allow the POST Commission to better implement and administer the decertification process.

### 2. POST Certification and Senate Bill 2

The Commission on Peace Officer Standards and Training, or POST, was established by the Legislature in 1959 and currently has a staff of over 130 and functions under an executive director that is appointed by the full commission. POST is funded through the general fund and through the state penalty fund, which receives money from penalty assessments on criminal and traffic fines. Existing law sets forth the basic criteria individuals must meet in order to be appointed as a peace officer, and gives POST authority to set minimum training and selection standards for peace officers employed by agencies that participate in the POST program.<sup>1</sup>

In 2021, the Legislature passed sweeping legislation requiring POST to create a new, mandatory certification process for peace officers (Senate Bill 2, Bradford, Ch. 409, Stats. of 2021.) Under SB 2, POST was directed create a certification program for peace officers, who must receive a proof of eligibility and a basic certificate in order to serve in that capacity.<sup>2</sup> Additionally, SB 2 provided a new mechanism by which POST may investigate and review allegations of “serious misconduct” against an officer. The measure empowered POST to make a determination on whether, at the conclusion of that investigation, to suspend or revoke the officer’s certification.

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<sup>1</sup> Gov’t Code § 1029; Penal Code §13510(a).

<sup>2</sup> Penal Code § 13510.1; for more information on certification, see <https://post.ca.gov/Certification>

Currently, twenty California police officers face possible decertification by POST.<sup>3</sup> SB 2 also created two new entities within POST: the Peace Officer Standards Accountability Division (the “Division”), which is tasked with conducting and reviewing investigations into serious misconduct and bringing proceedings seeking revocation or suspension of certifications, and the Peace Officer Standards Accountability Advisory Board (the “Board”), which is tasked with making recommendations on the decertification of peace officers to the POST Commission.<sup>4</sup> Other relevant components the SB 2 process will be described below in the context of the changes proposed in this bill.

### 3. Limiting Access to Sensitive Information in POST Proceedings

Under existing law, when the Division finds reasonable grounds for revocation or suspension of an officer’s certification after conducting a serious misconduct investigation, and the officer appeals that determination, the Board is required to review the Division’s determination. Existing law requires the Board to meet at least four times per year to conduct these reviews in public hearings and make recommendations to the POST Commission regarding appropriate sanctions, if any are warranted. Existing law expressly provides that hearings of the board and review of decertification recommendations by the POST Commission, and any records introduced during those proceedings, shall be public.

This bill imposes a limitation on the requirement that these hearings and records be public. Specifically, this bill provides that if the Division determines, after an initial review, that the interest in public disclosure of sensitive information is outweighed by legitimate interests in confidentiality, it may put materials containing that information under seal to be examined by the Board or POST Commission in a closed session. After reviewing that material, the Board or POST Commission may make the information available to the public, subject to any terms and conditions it deems appropriate. Although the Legislature must be circumspect in imposing limitations on the public’s access to government meetings and related records, the constraint imposed by this provision of the bill appears to be a reasonable safeguard on the privacy interests of peace officers facing potential disciplinary action.

A separate provision of this bill imposes a limitation on the existing requirement that POST to maintain information reported to it by law enforcement agencies regarding specified employment changes and allegations that could render a peace officer subject to suspension or revocation of their certification. Under that existing requirement, POST must maintain the information in a manner that may be accessed by the subject peace officer, any law enforcement agency performing a preemployment background investigation, or the POST Commission for purposes of decertification. The limitation imposed by this bill provides that if the POST Commission determines that disclosure of that information may jeopardize an ongoing investigation, put a victim or witness at risk, or may create any risk of harm or injury that outweighs the interest in disclosure, the Commission may withhold the information until the risk has abated such that the interest in disclosure is no longer outweighed by the risk.

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<sup>3</sup> “Twenty police officers in California face possible decertification, which would end their careers.” 3 April 2023. Los Angeles Times. <https://www.latimes.com/california/story/2023-04-03/twenty-police-officers-in-california-face-possible-decertification-a-move-that-would-stop-them-being-cops>

<sup>4</sup> Penal Code §§ 13509.5, 13509.6

#### 4. Definitional and Clarifying Changes to SB 2 Process

##### *Definition of “Certification”*

Under existing law, “certification” is defined as a valid and unexpired basic certificate or proof of eligibility. Under Senate Bill 2, beginning January 1, 2023, all peace officers who do not possess or are not eligible for a Basic Certificate are required to obtain a “proof of eligibility” within 10 days of appointment, regardless of whether they are employed by a POST participating agency. The “proof of eligibility” is merely a certification – distinct from a Basic Certificate – that confirms that an individual is eligible to be a peace officer in California.<sup>5</sup> In addition to the Basic Certificate, existing law requires POST to create programs for the issuance of intermediate, advanced, supervisory, management, and executive certificates. This bill redefines “certification” to mean any and all valid unexpired certificates issued by POST, including basic, intermediate, advanced, supervisory, management, and executive certificates, or any proof of eligibility.

##### *Minimum Peace Officer Eligibility Requirements*

Under existing law, law enforcement agencies that employ peace officers can only employ individuals with current, valid certification. However, an exception exists wherein agencies may provisionally employ a person for 2 years pending certification by POST provided that the person has received certification and has not previously been certified or denied certification. This bill modifies that exception, providing that an agency may provisionally employ a person for 2 years pending certification, as long as that person has received a proof of eligibility, and has not previously been certified or had their certification denied or revoked.

##### *Board Member Training Requirement*

Senate Bill 2 established several requirements related to the selection of Board members and prerequisites for service. One such requirement mandates that all members of the board complete a 40-hour decertification course developed by the POST Commission, and sets forth the topics to be covered in that course. This bill removes the requirement that the course be 40 hours in length, and leaves the length of the course undefined.

##### *Suspension Determinations*

Existing law states that a peace officer may have their certification suspended or revoked if the person has been terminated for cause from employment as a peace officer, or has, while employed as a peace officer, otherwise engaged in any serious misconduct. A subsequent provision provides an extensive description of what may constitute “serious misconduct.”<sup>6</sup> Within the same section of the Penal Code, existing law provides that the POST Commission may initiate proceedings to revoke or suspend a peace officer’s certification for specified serious misconduct that occurred before January 1, 2022, the effective date of Senate Bill 2.<sup>7</sup> A clarifying sentence specifies that nothing in the provision above prevents the POST Commission from considering the peace officer’s prior conduct and service record in determining whether revocation is appropriate for serious misconduct. This bill simply adds two words to that

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<sup>5</sup> For more information on certificates and proof of eligibility, see [SB-2-FAQs \(ca.gov\)](#)

<sup>6</sup> Penal Code §13510.8(a), (b).

<sup>7</sup> Separate provisions deal with conduct that occurs after the effective date of SB 2.

sentence, specifying that nothing in the provision prevents POST from considering the peace officer's prior conduct and service record in determining whether *suspension or* revocation is appropriate.

**-- END --**