

22-10 - Senate Bill 2: Officer Decertification and the National Decertification Index

Los Angeles County Sheriff's Department NEWSLETTER Field Operations Support Services



SENATE BILL 2: OFFICER DECERTIFICATION AND THE NATIONAL DECERTIFICATION INDEX

Background

On September 30, 2021, Governor Gavin Newsom signed Senate Bill 2 (SB 2) into law, which will be completely effective on January 1, 2023.

SB 2 establishes a decertification process which **may** suspend or revoke a peace officer's certification due to "serious misconduct."

SB 2 also requires law enforcement agencies to employ peace officers under Penal Code 830.1, who are issued a current, valid certification or pending certification from the Commission on Peace Officer Standards and Training.

Effective January 1, 2023, all officers issued a California POST certificate under Penal Code Section 830.1 **and** who have been alleged to have engaged in serious misconduct, are subject to potential suspension or revocation of their POST certificate.

Who Falls Under Senate Bill 2

The following 830 certifications, as defined in their respective penal code (PC) sections, are subject to the oversight of SB 2:

- 830.1 PC, 830.2 PC (except Department of Corrections), 830.3 PC, 830.32 PC, and 830.33 PC;
- SB 2 applies to reserve deputies; and
- SB 2 **does not** apply to custody assistants.

Serious Misconduct

Per 13510.8(b) PC, effective January 1, 2023, POST will adopt a definition of "serious misconduct" to include at a minimum, the following criteria to be considered for ineligibility for, or revocation of, certification;

Dishonesty relating to the reporting, investigation, or prosecution of a crime, or relating to the reporting of, or investigation of misconduct by a peace officer or custodial officer;

- Including, but not limited to false statements, intentionally filing false reports, tampering with, falsifying, destroying, or concealing evidence, perjury, and tampering with data recorded by a body-worn camera or other recording device for purposes of concealing misconduct.

Abuse of power – Including, but not limited to intimidating witnesses, knowingly obtaining a false confession, and knowingly making a false arrest;

Physical abuse – Excessive or unreasonable use of force;

Sexual Assault – Commission or attempted initiation of a sexual act with a member of the public;

- On-duty through force, threat, coercions, extortion, offer of leniency or other official favor, or
- Under color of authority – Propositioning for or commission of any sexual act while on-duty.

Demonstrating Bias due to race, national origin, religions, gender identity or expression, housing status, sexual orientation, mental or physical disability, other protected status in violation of law or Department policy, or inconsistent with a peace officer's obligation to carry out their duties in a fair and unbiased manner;

Acts that violate the law that are sufficiently egregious or repeated, **and/or** are inconsistent with a peace officer's obligation to uphold the law or respect the rights of members of the public;

Participation in a law enforcement gang – A group of law enforcement officers within a law enforcement agency who may identify themselves by a name and may be associated with an identifying symbol, including but not limited to matching tattoos, and who engage in a pattern of on-duty behavior that intentionally violates the law or fundamental principles of professional policing;

Failure to cooperate with an investigation into potential police misconduct, including an investigation conducted pursuant to Penal Code section 13510.8;

- The lawful exercise of rights granted under the United States Constitution, the California Constitution, or any other law shall not be considered a failure to cooperate;

Failure to intercede when present and observing another officer using force that is clearly beyond that which is necessary;

- As determined by an objectively reasonable officer under the circumstances; and
- Considering other officers may have additional information regarding the threat posed by a subject.

Agency Reporting Requirements

Per further requirements of SB 2, beginning January 1, 2023, agencies employing peace officers will have to

report certain events involving peace officers they employ, as specified in 13510.9 PC.

The following events are required to be reported to POST within 10 days of Department knowledge:

- The employment, appointment, termination or separation from employment or appointment, of a peace officer including any involuntary termination, resignation, or retirement;
- Any complaint, charge, or allegation of conduct against a peace officer, or investigation into the conduct of a peace officer that could render the officer the subject of suspension or revocation pursuant 13510.8 PC;
- Findings or recommendations by civil oversight entities that could render the officer the subject of suspension or revocation pursuant to 13510.8 PC;
- 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 pursuant to 13510.8 PC; and/or
- Civil judgment or court finding against a peace officer based on conduct, or settlement of a claim, that could affect the officer's certification.

Required Retroactive Reporting

The provisions of Penal Code section 13510.9, order that law enforcement agencies will have to **retroactively report** certain events involving peace officers they employ, that have occurred between January 1, 2020, and January 1, 2023. This reporting must be submitted to POST beginning July 1, 2023.

Proceeding to Revoke or Suspend a Certification

13510.8(g)(1) PC Provides the authority for POST to act by revoking or suspending a certification for misconduct which occurred prior to January 1, 2022, only for the following:

- Serious misconduct as defined:
 - Dishonesty;
 - Sexual assault; or
 - Excessive use of **deadly** force resulting in death or serious bodily injury.
- Employing agency makes a final determination regarding its investigation AFTER January 1, 2022.

National Decertification Index

The National Decertification Index (NDI) is a national registry of decertified peace officers. POST is responsible for the entering of decertified peace officers into the NDI. Upon evaluation of an event, POST will

determine if a peace officer's certificate is to be suspended or revoked, and if the peace officer's name is to be entered into the NDI.

The NDI **does not** contain information pertaining to an officer's conduct.

Hiring and Selection Disqualifiers

SB 2 asserts that all peace officers in the State of California must be certified by POST, and states a decertified officer is not allowed to continue to work, or gain certification to work, in law enforcement within the State of California.

SB 2 amends Government Code section 1029, to list hiring and selection disqualifiers for peace officers as follows:

- Any person convicted of a felony;
- Any person convicted of any offense in any other jurisdiction which would have been a felony if committed in this state;
 - Any person who has been discharged from the military for committing

an offense which would be considered a felony if committed in California;

- Any person who, after January 1, 2004, has been convicted of a felony crime, whether the court declares the offense to be a misdemeanor or becomes misdemeanor by operation of law;
 - Effective January 1, 2022, any person convicted of a felony shall not regain eligibility for peace officer employment based upon a later order setting aside, vacating, withdrawing, expunging, or otherwise dismissing or reversing the conviction, unless the court finds the person to be factually innocent;
 - Any person charged with a felony and adjudged to be mentally incompetent, or found guilty by reason of insanity of any felony;
 - Any person who has been determined to be a mentally disordered sex offender;
 - Any person adjudged addicted or in danger of becoming addicted to narcotics, convicted, and committed to a state institution;
 - Any person convicted of an administrative, military, or civil judicial process requiring not less than clear and convincing evidence;
 - Any person who has previously had their certification revoked by POST, or has voluntarily surrendered their certification, or has been denied an issuance of certification; or
 - Any person who is in the National Decertification Index for misconduct.

The basis for decertification varies in each state. Decertification from California POST does not necessarily mean a peace officer is ineligible for certification or employment in another state.

For further information, contact Field Operations Support Services at [REDACTED TEXT]

REFERENCES

[Senate Bill 2](#)

[Decertification Workflow](#)
