

## PROFESSIONAL STANDARDS BUREAU

### NOTICE 1.13

January 18, 2023

**TO:** All Sworn Personnel

**FROM:** Commanding Officer, Professional Standards Bureau

**SUBJECT:** SENATE BILL 2 – SERIOUS MISCONDUCT REPORTING AND PEACE OFFICER DECERTIFICATION

The purpose of this Notice is to ensure all sworn personnel are aware of Senate Bill 2 (SB) 2 and the Department's obligation to report serious misconduct to the California Commission on Peace Officer Standards and Training (POST) for their consideration of potential decertification.

### Background

On September 30, 2021, SB 2 was signed into law by Governor Gavin Newsom. As one of the most impactful bills for law enforcement, the legislation is intended to increase oversight and accountability for peace officers. Although SB 2 also adds several disqualifying circumstances for employment as an officer and limits some immunity provisions for civil lawsuits brought under the *Tom Bane Civil Rights Act*, the bill's most significant change is the creation of a process to revoke (decertify) a peace officer's POST certification.

As part of the decertification process, the legislation requires employing agencies to investigate all complaints or claims of serious misconduct; report to POST all complaints, claims, or allegations of serious misconduct; and, notify POST of a finding of serious misconduct.

### Serious Misconduct

Serious misconduct has been defined by POST, subject to the minimum criteria in SB 2, to encompass the following abridged nine categories of complaints, claims, or allegations:

1. **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;
2. **Abuse of Power** including...intimidating witnesses, knowingly obtaining a false confession, and knowingly making a false arrest;
3. **Physical abuse**, including...the excessive or unreasonable use of force;
4. **Sexual assault**...sexual act with a member of the public by means of force, threat, coercion, extortion, offer of leniency/official favor, or under the color of authority;
5. **Demonstrating bias** on a protected status;
6. **Acts that violate the law** and are sufficiently egregious or repeated to be inconsistent with a peace officer's obligation to uphold the law;
7. **Participation in a law enforcement gang**;
8. **Failure to cooperate with an investigation** into potential misconduct; and,
9. **Failure to intercede** when observing force "clearly beyond that which is necessary."

Sworn employees should be aware that a category of serious misconduct under SB 2 may encompass multiple Department allegation types. For example, “demonstrating bias” includes not only a *Biased Policing* allegation, but also all *Discourtesy* allegations associated with a protected class (e.g., *Discourtesy – Sexual Orientation*; *Discourtesy – Ethnic Remark*; or, *Discourtesy – Gender*).

### **Reporting Requirements**

Senate Bill 2 requires both prospective reporting (future reporting) and retroactive reporting for serious misconduct complaints and allegations.

#### **Prospective**

Effective January 1, 2023, within ten days of receiving a complaint or allegation of serious misconduct, the Department is required to report the complaint or allegation to POST.

**Note:** This initial reporting requirement solely addresses the initiation of the complaint or allegation and does not reflect the merits of the allegation in any manner.

If an allegation for serious misconduct is sustained, or a civil claim (lawsuit) predicated on actions that would constitute an allegation for serious misconduct is settled or found in favor of the plaintiff, the Department must report the sustained finding, or adverse judicial action, to POST within ten days of the finding of misconduct.

Lastly, the Department must report the final disposition of the complaint or allegation of serious misconduct.

Intake supervisors still have 15 days to complete the preliminary investigation for complaints. Upon receipt of the preliminary investigation, Professional Standards Bureau will report to POST all new complaints and allegations of serious misconduct within the required ten days.

#### **Retroactive**

By July 1, 2023, the Department must report all serious misconduct allegations, as well as adverse judicial findings or settlements, retroactively to January 1, 2020.

For complaints or allegations that occurred after January 1, 2020, and whose investigation was completed by December 31, 2021, only three categories of conduct are actionable: dishonesty; sexual assault; and, unreasonable deadly force that results in serious bodily injury or death.

For complaints or allegations that occurred after January 1, 2020, but whose investigation was completed on or after January 1, 2022, all nine serious misconduct categories are actionable.

**Note:** As used in this section, “actionable” means that POST may proceed to initiate decertification proceedings.

Risk Management and Legal Affairs Division is responsible for all retroactive reporting.

**Review Process for Decertification**

After the Department provides the required notifications, the Peace Officer Standards Accountability Division (POSAD) of POST will review the allegations and investigation and make a preliminary determination if serious misconduct occurred. When it is determined that serious misconduct did not occur, POSAD will notify the peace officer directly and close the case with no further action.

If it is determined serious misconduct did occur, POSAD will make a recommendation to decertify or suspend the peace officer's certificate and will directly notify the officer of their recommendation in writing. An officer has 30 days to effect a review/appeal of this recommended action. If an officer fails to request a review, POST will adopt POSAD's recommendation.

**Note:** Depending on an employee's duty status, the Department may need to provide POST with an employee's home address for the employee to receive written notification of POSAD's recommendation to decertify or suspend. As such, and as is required by Manual Section 3/790, employees shall ensure their Employee Record Form, Form 01.38.00, is kept current.

**Department Resources for Sworn Employees**

While the implementation of SB 2 is still evolving by regulatory action from POST, Professional Standards Bureau continues to coordinate with Risk Management and Legal Affairs Division to ensure compliance with serious misconduct reporting and awareness among sworn employees.

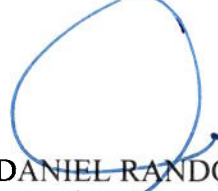
To assist employees with awareness and understanding, Professional Standards Bureau added a *Senate Bill 2 Resources* link on its Local Area Network (LAN) page with a link to the legislative text, summaries of the action, and process charts from POST. Additionally, common questions will be answered through a Frequently Asked Questions (FAQ) section.

Any questions about this Notice should be directed to the Serious Misconduct Reporting Unit, Analysis and Regulatory Compliance Section, Professional Standards Bureau, at (213) 996-2986.



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APPROVED:



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