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AB-655 California Law Enforcement Accountability Reform Act. (2021-2022)

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Date Published: 10/03/2022 02:00 PM

Assembly Bill No. 655

CHAPTER 854

An act to add Title 4.9 (commencing with Section 13680) to Part 4 of the Penal Code, relating to peace officers.

[Approved by Governor September 30, 2022. Filed with Secretary of State September 30, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

AB 655, Kalra. California Law Enforcement Accountability Reform Act.

Existing law requires that a candidate for a peace officer position be of good moral character, as determined by a thorough background investigation.

This bill would require that background investigation to include an inquiry into whether a candidate for specified peace officer positions has engaged in membership in a hate group, participation in any hate group activity, or advocacy of public expressions of hate, as specified, and as those terms are defined. The bill would provide that certain findings would disqualify a person from employment.

Existing law requires a public agency that employs peace officers to have a procedure to investigate complaints by members of the public against peace officers.

This bill would require an agency to investigate, as specified, any internal complaint or complaint made by the public that alleges, as specified, that a peace officer engaged in membership in a hate group, participation in any hate group activity, or advocacy of public expressions of hate. The bill would provide that certain findings would require the employing agency to remove that peace officer from appointment as a peace officer. This bill would also require the Department of Justice to adopt and promulgate guidelines for the investigation and adjudication of these complaints by local agencies.

Existing law makes the personnel records of peace officers, as specified, confidential and not subject to disclosure as public records.

This bill would exempt from confidentiality the record of any sustained complaint that a peace officer has engaged in membership in a hate group, participation in any hate group activity, or advocacy of public expressions of hate.

By requiring local agencies to investigate certain complaints, this bill would impose a state-mandated local program.

The California Constitution requires local agencies, for the purpose of ensuring public access to the meetings of public bodies and the writings of public officials and agencies, to comply with a statutory enactment that amends or enacts laws relating to public records or open meetings and contains findings demonstrating that the enactment furthers the constitutional requirements relating to this purpose.

This bill would make legislative findings to that effect.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Title 4.9 (commencing with Section 13680) is added to Part 4 of the Penal Code, to read:

TITLE 4.9. California Law Enforcement Accountability Reform Act.

13680. For purposes of this title, the following terms have the following meanings:

(a) "Genocide" means any of the following acts committed with specific intent to destroy, in whole or substantially in part, a national, ethnic, racial, or religious group through means including killing or causing serious bodily injury to members of the group, causing permanent impairment of the mental faculties of members of the group through drugs, torture, or similar means, subjecting the group to conditions of life that are intended to cause the physical destruction of the group, in whole or in part, imposing measures intended to prevent births within the group, or forcibly transferring children of the group to another group.

(b) "Hate crime" has the same meaning as is Section 422.55.

(c) "Hate group" means an organization that supports, advocates for, threatens, or practices genocide or the commission of hate crimes.

(d) "Membership in a hate group" means being, or holding oneself out as, a member of a hate group with the intent to further the unlawful aims of the group.

(e) "Participation in any hate group activity" means active and direct involvement in, or coordination or facilitation of, any hate crime by hate group members.

(f) "Peace officer" means a person described within Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, who is employed by an agency or department of the state, or any political subdivision thereof, that provides uniformed police services to members of the public including, without limitation, a municipal police department, a county sheriff's department, the California Highway Patrol, the University of California, California State University, or any California Community College police department, and the police department of any school district, transit district, park district, or port authority. "Peace officer" also includes any state or local correctional or custodial officer, and any parole or probation officer.

(g) (1) "Public expression of hate" means any statement or expression to another person, including any statement or expression made in an online forum that is accessible to another person, that explicitly advocates for, explicitly supports, or explicitly threatens to commit genocide or any hate crime or that explicitly advocates for or explicitly supports any hate group.

(h) "Sustained" means a final determination by the investigating agency following an investigation, or, if adverse action is taken, a final determination by a commission, board, hearing officer, or arbitrator, as applicable, following an opportunity for an administrative appeal pursuant to Sections 3304 and 3304.5 of the Government Code, that the allegation is true.

13681. (a) Any background investigation of a candidate for a peace officer position shall include an inquiry into whether the candidate has engaged or is engaging in membership in a hate group, participation in any hate group activity or advocacy of public expressions of hate.

(b) The hiring agency shall deny employment to a candidate for a peace officer position if, during a preemployment background it is determined that in the past 7 years and since 18 years of age, the candidate has engaged in membership in a hate group, participation in any hate group activity, or advocacy of public expressions of hate.

(c) A candidate for a peace officer position shall not be ineligible to be hired pursuant to this section if the candidate has ceased all activities described in subdivision (a) and at least 7 years has passed since the last such activity.

13682. (a) Notwithstanding Section 19635 of the Government Code, or any other law, any public agency that employs peace officers shall investigate, or cause to be investigated by the appropriate oversight agency, any internal complaint or complaint

from a member of the public that alleges, with sufficient particularity to investigate the matter, that a peace officer employed by that agency has in the previous seven years and since 18 years of age, engaged in membership in a hate group, participation in any hate group activity or advocacy of any public expressions of hate.

(b) The agency shall remove from appointment as a peace officer, any peace officer against whom a complaint described in subdivision (a) is sustained.

(c) The Department of Justice shall adopt and promulgate guidelines for the investigation and adjudication of complaints described in subdivision (a) by a public agency or oversight agency.

(d) Nothing in this section authorizes or requires adverse action to be taken against any peace officer who engages in any activities described in subdivision (a) as part of any undercover assignment in the course of their employment as a peace officer, or in any undercover work as part of any bona fide academic or journalistic research.

13683. (a) Notwithstanding Section 832.7, subdivision (f) of Section 6254 of the Government Code, or any other law, any record relating to an investigation of a complaint described in Section 13682 in which a sustained finding was made by the public agency or oversight agency that a peace officer has engaged in membership in a hate group, participation in any hate group activity, or advocacy of public expressions of hate shall not be confidential and shall be made available for public inspection.

(b) A record disclosed pursuant to this section may be redacted as follows:

(1) To remove personal data or information, such as a home address, telephone number, email address, or identities of family members.

(2) To preserve the anonymity of complainants and witnesses.

(3) To protect confidential medical, financial, or other information of which disclosure is specifically prohibited by federal law or would cause an unwarranted invasion of personal privacy that clearly outweighs the strong public interest in records about misconduct and serious use of force by peace officers and custodial officers.

(4) Where there is a specific, articulable, and particularized reason to believe that disclosure of the record would pose a significant danger to the physical safety of the peace officer or another person.

SEC. 2. The Legislature finds and declares that Section 1 of this act, which adds Section 13683 to the Penal Code, furthers, within the meaning of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the purposes of that constitutional section as it relates to the right of public access to the meetings of local public bodies or the writings of local public officials and local agencies. Pursuant to paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the Legislature makes the following findings:

The public has a strong, compelling interest in law enforcement transparency because it is essential to having a just and democratic society.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district under this act would result from a legislative mandate that is within the scope of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.