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SB-586 Peace officers: certification. (2021-2022)

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Senate Bill No. 586

CHAPTER 429

An act to amend Section 13510.8 of the Penal Code, relating to public employment.

[Approved by Governor September 30, 2021. Filed with Secretary of State September 30, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

SB 586, Bradford. Peace officers: certification.

Proposed law, as proposed to be added by Senate Bill 2 of the 2021-22 Regular Session, authorizes the Commission on Peace Officer Standards and Training to revoke a certified peace officer's certification under specified circumstances, and states that an action by a law enforcement agency or decision resulting from an appeal of an agency's action does not preclude action by the commission to investigate, suspend, or revoke a peace officer's certification.

This bill would, if Senate Bill 2 of the 2021-22 Regular Session becomes operative, additionally state that whether a particular factual or legal determination in a prior appeal proceeding has preclusive effect in proceedings of the commission would be governed by the existing law of collateral estoppel.

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

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

SECTION 1. Section 13510.8 of the Penal Code, as proposed to be added by Senate Bill 2 of the 2021-22 Regular Session, is amended to read:

13510.8. (a) (1) 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 Section 1029 of the Government Code.

(2) A 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 described in subdivision (b).

(b) By January 1, 2023, the commission shall adopt by regulation a definition of "serious misconduct" that shall serve as the criteria to be considered for ineligibility for, or revocation of, certification. This definition shall include all of the following:

(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, 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.

(2) Abuse of power, including, but not limited to, intimidating witnesses, knowingly obtaining a false confession, and knowingly making a false arrest.

(3) Physical abuse, including, but not limited to, the excessive or unreasonable use of force.

(4) Sexual assault, as described in subdivision (b) of Section 832.7.

(5) Demonstrating bias on the basis of race, national origin, religion, gender identity or expression, housing status, sexual orientation, mental or physical disability, or 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. This paragraph does not limit an employee's rights under the First Amendment to the United States Constitution.

(6) Acts that violate the law and are sufficiently egregious or repeated as to be inconsistent with a peace officer's obligation to uphold the law or respect the rights of members of the public, as determined by the commission.

(7) Participation in a law enforcement gang. For the purpose of this paragraph, a "law enforcement gang" means a group of peace 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, including, but not limited to, excluding, harassing, or discriminating against any individual based on a protected category under federal or state antidiscrimination laws, engaging in or promoting conduct that violates the rights of other employees or members of the public, violating agency policy, the persistent practice of unlawful detention or use of excessive force in circumstances where it is known to be unjustified, falsifying police reports, fabricating or destroying evidence, targeting persons for enforcement based solely on protected characteristics of those persons, theft, unauthorized use of alcohol or drugs on duty, unlawful or unauthorized protection of other members from disciplinary actions, and retaliation against other officers who threaten or interfere with the activities of the group.

(8) Failure to cooperate with an investigation into potential police misconduct, including an investigation conducted pursuant to this chapter. For purposes of this paragraph, 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.

(9) 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, taking into account the possibility that other officers may have additional information regarding the threat posed by a subject.

(c) (1) Beginning no later than January 1, 2023, each law enforcement agency shall be responsible for the completion of investigations of allegations of serious misconduct by a peace officer, regardless of their employment status.

(2) The division shall promptly review any grounds for decertification described in subdivision (a) received from an agency. The division shall have the authority to review any agency or other investigative authority file, as well as to conduct additional investigation, if necessary. The division shall only have authority to review and investigate allegations for purposes of decertification.

(3) (A) The board, in their discretion, may request that the division review an investigative file or recommend that the commission direct the division to investigate any potential grounds for decertification of a peace officer. Those requests and recommendations from the board to the division or commission must be based upon a decision by a majority vote.

(B) The commission, in its discretion, may direct the division to review an investigative file. The commission, either upon its own motion or in response to a recommendation from the board, may direct the division to investigate any potential grounds for decertification of a peace officer.

(C) The division, in its discretion, may investigate without the request of the commission or board any potential grounds for revocation of certification of a peace officer.

(4) The division, in carrying out any investigation initiated pursuant to this section or any other duty shall have all of the powers of investigation granted pursuant to Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code.

(5) Notwithstanding any other law, the investigation shall be completed within three years after the receipt of the completed report of the disciplinary or internal affairs investigation from the employing agency pursuant to Section 13510.9, however, no time limit shall apply if a report of the conduct was not made to the commission. An investigation shall be considered completed upon a notice of intent to deny, suspend, or revoke certification issued pursuant to subdivision (e). The time limit shall be tolled during the appeal of a termination or other disciplinary action through an administrative or judicial proceeding or during any criminal prosecution of the peace officer. The commission shall consider the peace officer's prior conduct and service record,

and any instances of misconduct, including any incidents occurring beyond the time limitation for investigation in evaluating whether to revoke certification for the incident under investigation.

(6) An action by an agency or decision resulting from an appeal of an agency's action does not preclude action by the commission to investigate, suspend, or revoke a peace officer's certification pursuant to this section. Whether a particular factual or legal determination in a prior appeal proceeding shall have preclusive effect in proceedings under this chapter shall be governed by the existing law of collateral estoppel.

(d) Upon arrest or indictment of a peace officer for any crime described in Section 1029 of the Government Code, or discharge from any law enforcement agency for grounds set forth in subdivision (a), or separation from employment of a peace officer during a pending investigation into allegations of serious misconduct, the executive director shall order the immediate temporary suspension of any certificate held by that peace officer upon the determination by the executive director that the temporary suspension is in the best interest of the health, safety, or welfare of the public. The order of temporary suspension shall be made in writing and shall specify the basis for the executive director's determination. Following the issuance of a temporary suspension order, proceedings of the commission in the exercise of its authority to discipline any peace officer shall be promptly scheduled as provided for in this section. The temporary suspension shall continue in effect until issuance of the final decision on revocation pursuant to this section or until the order is withdrawn by the executive director.

(e) Records of an investigation of any person by the commission shall be retained for 30 years following the date that the investigation is deemed concluded by the commission. The commission may destroy records prior to the expiration of the 30-year retention period if the subject is deceased and no action upon the complaint was taken by the commission beyond the commission's initial intake of such complaint.

(f) Any peace officer may voluntarily surrender their certification permanently. Voluntary permanent surrender of certification pursuant to this subdivision shall have the same effect as revocation. Voluntary permanent surrender is not the same as placement of a valid certification into inactive status during a period in which a person is not actively employed as a peace officer. A permanently surrendered certification cannot be reactivated.

(g) (1) The commission may initiate proceedings to revoke or suspend a peace officer's certification for conduct which occurred before January 1, 2022, only for either of the following:

(A) Serious misconduct pursuant to paragraphs (1) or (4) of subdivision (b), or pursuant to paragraph (3) of subdivision (b) for the use of deadly force that results in death or serious bodily injury.

(B) If the employing agency makes a final determination regarding its investigation of the misconduct after January 1, 2022.

(2) Nothing in this subdivision prevents the commission from considering the peace officer's prior conduct and service record in determining whether revocation is appropriate for serious misconduct.

SEC. 2. Section 1 of this act shall become operative only if Senate Bill 2 of the 2021-22 Regular Session is enacted and becomes effective.