



**Digital Commons@**

Loyola Marymount University  
LMU Loyola Law School

## Loyola of Los Angeles Law Review

---

Volume 56 | Number 4

Article 7

---

Winter 12-21-2023

### Moving Toward Police Accountability: Beyond Senate Bill 2

Ani Boyadjian

Follow this and additional works at: <https://digitalcommons.lmu.edu/llr>

---

#### Recommended Citation

Ani Boyadjian, *Moving Toward Police Accountability: Beyond Senate Bill 2*, 56 Loy. L.A. L. Rev. 1355 (2023).

Available at: <https://digitalcommons.lmu.edu/llr/vol56/iss4/7>

This Notes is brought to you for free and open access by the Law Reviews at Digital Commons @ Loyola Marymount University and Loyola Law School. It has been accepted for inclusion in Loyola of Los Angeles Law Review by an authorized administrator of Digital Commons@Loyola Marymount University and Loyola Law School. For more information, please contact [digitalcommons@lmu.edu](mailto:digitalcommons@lmu.edu).

## MOVING TOWARD POLICE ACCOUNTABILITY: BEYOND SENATE BILL 2

Ani Boyadjian\*

*On September 30, 2021, California Governor Gavin Newsom signed into law Senate Bill 2 (SB 2), “creat[ing] a system to investigate and revoke or suspend peace officer certification for serious misconduct,” as well as establishing the Peace Officer Standards Accountability Division and the Peace Standards Accountability Advisory Board, which will be responsible for investigations into police misconduct. This Note will describe the new features of SB 2’s decertification provisions in contrast to traditional methods of addressing police misconduct. Additionally, this Note will examine where the bill fell short, and how to overcome its shortcomings.*

---

\* J.D. Candidate, May 2023, LMU Loyola Law School, Los Angeles; B.A. Legal Studies, University of California, Berkeley, May 2020. Thank you to the editors and staff of the *Loyola of Los Angeles Law Review* for their diligent work in editing this Note. Additionally, thank you to Professor Laurie Levenson for her continuous guidance, thoughtful feedback, and support throughout the writing process. Lastly, a special thank you to my family and friends for your constant, unwavering support and encouragement.

## INTRODUCTION

On April 11, 2018, Kenneth Ross Jr., a young African American man, was fatally shot by a police officer. Officers responded promptly after receiving reports of a man firing a weapon around 2:30 p.m. near a park in Gardena, California.<sup>1</sup> The report stated the suspect responsible for the shootings was a male with dreadlocks wearing a gray shirt with gray shorts, and that the suspect was carrying a pink handgun.<sup>2</sup> Ross was spotted unarmed, running near the location of the park.<sup>3</sup> Once officers began following him, they demanded that he stop running.<sup>4</sup> Ross, who was wearing baggy shorts, was using his left hand to pull up his pants whilst running from the police.<sup>5</sup> Soon thereafter, Gardena Police Department Officers, Sergeant Michael Robbins and Officer Michael Medeiros, arrived at the park and began chasing Ross on foot.<sup>6</sup> According to the officer's bodycam footage, Officer Medeiros initially drew his pistol and screamed at Ross to show his hands but later switched to a taser once he began the pursuit on foot.<sup>7</sup> Officer Medeiros was formally interviewed and testified that Ross appeared to be holding his shorts up or had his hands in his pocket.<sup>8</sup>

Sergeant Robbins was the last officer to arrive on the scene.<sup>9</sup> Before shooting his automatic rifle twice, Robbins exclaimed, "Put your hands up right now or else you're going to get shot."<sup>10</sup> He said this only one time. Unfortunately, Ross did not stop running.<sup>11</sup> He was only twenty-five years old at the time Robbins fatally shot him in the

---

1. Stefanie Dazio, *Family of Black Man Killed by Gardena Police Settles Lawsuit*, NBC L.A. (Nov. 17, 2021, 1:06 PM), <https://www.nbclosangeles.com/news/local/gardena-police-shooting-kenneth-ross/2761826/> [<https://perma.cc/RTH7-X9ZQ>]; CZR, *Justice for Kenneth Ross, Jr. –Response to City of Gardena's Presentation*, YOUTUBE (May 7, 2020), [https://www.youtube.com/watch?v=0cLH7aGT\\_p8](https://www.youtube.com/watch?v=0cLH7aGT_p8) [<https://perma.cc/4SJ7-EFJ5>].

2. JUST. SYS. INTEGRITY DIV., LA CNTY. DIST. ATT'Y, GARDENA POLICE DEP'T: OFFICER INVOLVED SHOOTING OF KENNETH ROSS 1 (MAY 28, 2019).

3. CZR, *supra* note 1.

4. Dazio, *supra* note 1.

5. CZR, *supra* note 1. According to the statement of Gardena Police Department Officer Emily Colon, she observed Ross's hands "move straight to his left pocket area the moment he ran from her. As Ross ran through the parking lot, his left hand never moved from his left hip area, while his right hand moved back and forth." JUST. SYS. INTEGRITY DIV., *supra* note 2, at 6.

6. CZR, *supra* note 1.

7. *Id.*

8. *Id.*; see JUST. SYS. INTEGRITY DIV., *supra* note 2, at 9 ("Ross' left hand was either in his pocket or holding the outside of his pocket.").

9. CZR, *supra* note 1.

10. *Id.*

11. Dazio, *supra* note 1.

back and shoulder with a rifle.<sup>12</sup> After Ross was shot and killed, the officers continued to handcuff him and search him.<sup>13</sup> They did not attempt any form of CPR until after a full search of Ross was conducted.<sup>14</sup>

Ross's family filed a federal lawsuit against Sergeant Robbins and the City of Gardena.<sup>15</sup> The parties reached a settlement in September 2021, weeks before Governor Gavin Newsom signed Senate Bill 2 (SB 2) into law.<sup>16</sup> Ross's son will receive \$1.3 million in the lawsuit settlement.<sup>17</sup>

Meanwhile, Sergeant Robbins was cleared of wrongdoing after the incident.<sup>18</sup> In 2019, the Los Angeles County District Attorney's Office concluded that Robbins was acting in self-defense when he shot Ross.<sup>19</sup> They stated that Robbins was "in the performance of his duties when attempting to apprehend Ross for an assault with a deadly weapon that had just occurred."<sup>20</sup> The DA's Office also found that a reasonable person, under the circumstances and with reason to believe the suspect was armed, would conclude that when Ross was lifting his right arm towards them, he was drawing his gun to shoot, placing them "in reasonable fear of serious bodily injury or death."<sup>21</sup> Additionally, the DA's Office concluded that Robbins had probable cause to believe that Ross had committed a forcible and atrocious felony, justifying the use of deadly force to capture a fleeing suspect.<sup>22</sup>

12. Marlene Lenthang, *Son of Black Man Fatally Shot by California Police to Receive \$1.3 Million in Lawsuit Settlement*, NBC NEWS (Nov. 18, 2021, 10:11 AM), <https://www.nbcnews.com/news/us-news/son-black-man-fatally-shot-california-police-settles-lawsuit-13-million-rena5977> [<https://perma.cc/SE9K-2KLU>]. Notably, Ross suffered from bipolar disorder, which "caus[ed] him at times to lose touch with reality." *Almarou v. City of Gardena*, No. CV 18-04908 -CJC, 2019 WL 7945590, at \*1 (C.D. Cal. Dec. 30, 2019).

13. CZR, *supra* note 1. When asked whether the officers should perform CPR on Ross, Officer Robbins stated, "We'll cuff him, let's search him real quick." *Id.*

14. *Id.* During the search, Officer Robbins states "Uh, he's gonna be nothin'. I'm pretty sure he's toast." *Id.* He also asked the other officers present at the scene whether their body worn cameras were off, asking, "Everything off?" and ordering, "Off with the videos." One officer's camera remained on. *Id.*

15. *Almarou*, 2019 WL 7945590, at 1; Dazio, *supra* note 1.

16. Dazio, *supra* note 1.

17. Lenthang, *supra* note 12; *Recent Settlements*, DOUGLAS HICKS L., <https://www.douglas-hickslaw.com/results> [<https://perma.cc/J8AU-2PR3>] ("\$1.3 million settlement against the City of Gardena for the parents of a young man shot and killed by Gardena Police Department.").

18. See JUST. SYS. INTEGRITY DIV., *supra* note 2, at 20.

19. Lenthang, *supra* note 12; JUST. SYS. INTEGRITY DIV., *supra* note 2, at 20.

20. JUST. SYS. INTEGRITY DIV., *supra* note 2, at 19.

21. *Id.* at 20.

22. *Id.*

This unfortunate circumstance—a non-hostile and nonthreatening citizen killed at the hands of a police officer—is not surprising. For decades, we have heard stories of police officers mistreating citizens and committing misconduct similar to that of Robbins.<sup>23</sup> In 2018, the same year that Ross was killed, 143 Californians were killed by the police.<sup>24</sup> African Americans are killed at a significantly higher rate than White Americans.<sup>25</sup> This exacerbates the existing vulnerability they face as a result of over-policing and enduring “generations of individual and community trauma.”<sup>26</sup> Today, the public has started

23. On July 17, 2014, Eric Garner uttered the words “I can’t breathe” eleven times as NYPD Officer Daniel Pantaleo pinned him to the ground until his death. Katie Benner, *Eric Garner’s Death Will Not Lead to Federal Charges for N.Y.P.D. Officer*, N.Y. TIMES (July 16, 2019), <https://www.nytimes.com/2019/07/16/nyregion/eric-garner-daniel-pantaleo.html> [<https://perma.cc/XA3C-JNH2>]. On August 9, 2014, Michael Brown was fatally shot by an officer in Ferguson, Missouri. Ilesha S. Nunes, Note, *Hands Up, Don’t Shoot: Police Misconduct and the Need for Body Cameras*, 67 FLA. L. REV. 1811, 1813 (2016). On November 22, 2014, twelve-year-old Tamir Rice was shot and killed by a police officer in Cleveland, Ohio. *Tamir Rice Shooting: Justice Department Investigation Ends Without Charges*, THE GUARDIAN (Dec. 29, 2020), <https://www.theguardian.com/us-news/2020/dec/30/tamir-rice-shooting-justice-department-investigation-ends-without-charges> [<https://perma.cc/47R2-QYFY>]. On March 13, 2020, Breonna Taylor was shot five times as she was asleep in her apartment in Louisville, Kentucky during a police drug raid. Richard A. Oppel, Jr. et al., *What to Know About Breonna Taylor’s Death*, N.Y. TIMES (Aug. 23, 2022), <https://www.nytimes.com/article/breonna-taylor-police.html> [<https://perma.cc/5PWV-3KU2>]. On May 25, 2020, George Floyd was subdued with a knee to the neck for nine minutes by a Minneapolis, Minnesota police officer. Evan Hill, *How George Floyd Was Killed in Police Custody*, N.Y. TIMES, <https://www.nytimes.com/2020/05/31/us/george-floyd-investigation.html> (Jan. 24, 2020) [<https://perma.cc/VX6G-JRU4>]. These are only some of the many individuals who have been victims of police brutality. See also *Say Their Names*, STAN. UNIV., <https://exhibits.stanford.edu/saytheirnames/feature/65-stories> [<https://perma.cc/2TP4-Z9W7>].

24. See *Mapping Police Violence*, MAPPING POLICE VIOLENCE, <https://mappingpoliceviolence.org/> [<https://perma.cc/9P8N-CLRH>]. This database compiles any incident where a law enforcement officer (both off-duty and on-duty) has used lethal force resulting in a civilian being killed. This includes any such incident, whether or not it was considered “justified” or “unjustified” by the appropriate reviewing authority within the legal system. See also *Police Have Killed 986 People in L.A. County Since 2000*, L.A. TIMES, <https://web.archive.org/web/20221108085339/https://www.latimes.com/projects/los-angeles-police-killings-database/> (Nov. 8, 2022) [<https://perma.cc/UCA4-F92T>]; *Fatal Force Database*, WASH. POST, <https://www.washingtonpost.com/graphics/investigations/police-shootings-database/> [<https://perma.cc/QE6V-CBLH>] (“1,078 people have been shot and killed by police in the past year.”). Beginning in 2015, the Washington Post began logging every fatal shooting by an on-duty police officer in the United States. Between 2020 and 2022, the California Department of Justice opened twenty-five investigations of law enforcement officers who shot and killed an unarmed civilian. See *Current Cases Under Review by the California Department of Justice*, CAL. OFF. OF ATT’Y GEN., <https://oag.ca.gov/ois-incidents/current-cases> [<https://perma.cc/B3S6-CH3A>]; Nigel Duara, *Fatal Shootings: California’s Bid to Police Its Police Is Lagging*, CAL MATTERS (Nov. 10, 2022), <https://calmatters.org/justice/2022/11/california-police-shootings-unarmed-civilians/> [<https://perma.cc/48V2-7N6Z>].

25. “Of the unarmed people California police killed, three out of four were people of color.” S.B. 2, 2021-2022 Leg., Reg. Sess. § 2(c) (Cal. 2021); see *Mapping Police Violence*, *supra* note 24 (“Black people are 2.9x more likely to be killed by police than white people in California.”).

26. S.B. 2, 2021-2022 Leg., Reg. Sess. § 1(c) (Cal. 2021); see Kimeu W. Boynton, *Repeated, Ongoing, and Systemic Incidents of Racism and Their Harmful Mental Health Effects*, DEL. J. PUB.

holding accountable both police and the systems of government who enable police brutality. For example, the Black Lives Matter (BLM) Movement grew both nationally and globally in response to the escalating number of Black citizens murdered by law enforcement.<sup>27</sup> Though the movement was instrumental in prompting some forms of justice, it is evident that more work needed to be done and stronger reform laws needed to be passed.<sup>28</sup>

It is undeniably true that law enforcement is a difficult area of work. However, as the Legislature and courts have repeatedly recognized, “police officers . . . and other peace officers hold extraordinary powers to detain, to search, to arrest, and to use force, including deadly force.”<sup>29</sup> Most other professions—such as doctors and lawyers—require licenses or certification and must maintain a professional standard in the State of California.<sup>30</sup> Both the public and the state have a strong interest in ensuring that police officers who repeatedly commit misconduct are held responsible.

Until September 30, 2021, California was one of four states in the nation without a decertification law.<sup>31</sup> Forty-six states across the United States had created authority to revoke a peace officer’s certification for misconduct.<sup>32</sup> This process is known as decertification.<sup>33</sup> In 2003, the California Legislature previously removed the authority of the California Commission on Peace Officer Standards and Training

---

HEALTH, Nov. 2020, at 12, 12; Marcella Alsan et al., *The Tuskegee Study of Untreated Syphilis: A Case Study in Peripheral Trauma with Implications for Health Professionals*, J. GEN. INTERNAL MED., Oct. 2019, at 322, 322 (“Racially or ethnically targeted events may have adverse health implications for members of the group not directly targeted, a phenomenon known as peripheral trauma. Recent evidence suggests that mass incarceration, police brutality, and immigration actions all have such effects . . .”).

27. “#BlackLivesMatter was founded in 2013 in response to the acquittal of Trayvon Martin’s murderer.” *About*, BLACK LIVES MATTER, <https://blacklivesmatter.com/about/> [https://perma.cc/4D5T-RC2U].

28. Toni Jaramilla, *BLM: Uprisings to Reform*, 44 L.A. LAW. 28, 32 (June 2021).

29. S.B. 2, 2021-2022 Leg., Reg. Sess. § 2(a) (Cal. 2021).

30. S.B. 2, 2021-2022 Leg., Reg. Sess. § 2(d) (Cal. 2021); see *About the Board*, MED. BD. OF CAL., <https://www.mbc.ca.gov/About/> [https://perma.cc/R3DW-NYB6]; *Our Mission: What We Do*, THE STATE BAR OF CAL., <https://www.calbar.ca.gov/About-Us/Our-Mission> [https://perma.cc/F6FC-72XD].

31. The four states that did not have decertification authority prior to the enactment of SB 2 were California, Hawaii, New Jersey, and Rhode Island. S.B. 2, 2021-2022 Leg., Reg. Sess. § 2(b) (Cal. 2021).

32. *Peace Officers: Certification: Civil Rights: Hearing on S.B. 2 Before the S. Comm. on Pub. Safety*, 2021-2022 Leg., Reg. Sess. 9 (Cal. 2021) [hereinafter *Hearing on S.B. 2 Before the S. Comm. on Pub. Safety*]. The terms “peace officer” and “law enforcement officer” are used interchangeably throughout this Note.

33. *Id.*

to deny or cancel a peace officer's certification.<sup>34</sup> As a result, police officers who were accused of misconduct continued to be employed and jumped from one local police department to another.<sup>35</sup>

The process of decertification for police officers set forth by California's SB 2 is the product of citizen frustration with police misconduct and the failure of existing systems to deter future misconduct. This Note will first demonstrate what conditions led to the enactment of SB 2 by analyzing the climate of police brutality and public demands for police accountability through social movements. Next, it will set forth the traditional methods of combatting police brutality prior to the enactment of the decertification bill. This Note will argue that the SB 2 decertification process was the natural next step for California, as there was a need for an administrative process to put a check on police power. It will then describe the decertification process created in California through the enactment of SB 2, which implements a two-track process for decertification.<sup>36</sup> If a police officer is fired for serious misconduct,<sup>37</sup> decertification is warranted as a matter of course.<sup>38</sup> On the other hand, if an officer engages in misconduct and is not terminated, decertification would be discretionary based on further investigation and discretionary review.<sup>39</sup> Furthermore, this Note will consider the efficacy of SB 2, specifically by analyzing where the legislation falls short, and will suggest that the law be amended to include enforcement procedures in its reporting requirements, increase law enforcement representation in SB 2's newly created Peace Standards Accountability Advisory Board, and refine the definition of "serious misconduct" that would result in decertification. Finally, this Note will propose a federal solution to addressing police brutality,

---

34. *Id.* at 9–10.

35. *Hearing on S.B. 2 Before the S. Comm. on Pub. Safety, supra* note 32, at 10. Following the enactment of SB 1421, records of peace officer misconduct were disclosed to the public. *See* S.B. 1421, 2017-2018 Leg., Reg. Sess. (Cal. 2021). This revealed numerous instances of officers with serious misconduct remaining on the police force without being prosecuted. *Hearing on S.B. 2 Before the S. Comm. on Pub. Safety, supra* note 32, at 10. Additionally, many who were actually fired from one department would leave and get rehired at another department, where they would continue committing misconduct. *Id.*

36. *Hearing on S.B. 2 Before the S. Comm. on Pub. Safety, supra* note 32, at 10.

37. *See* discussion *infra* Section III.B.2. and accompanying text discussing "serious misconduct" for SB 2 purposes.

38. *Hearing on S.B. 2 Before the S. Comm. on Pub. Safety, supra* note 32, at 10.

39. "The states that have the most effective decertification schemes, Georgia and Florida, provide a discretionary process where the administering entity can look at other less serious misconduct not tied to a criminal conviction or an officer's firing." *Hearing on S.B. 2 Before the S. Comm. on Pub. Safety, supra* note 32, at 10.

2023]

POLICE ACCOUNTABILITY BEYOND SB 2

1361

both in terms of enacting federal decertification legislation and by directing the states to report state decertification statistics to national databases.

## I. BACKGROUND

### A. Police Brutality Trends

“The USA signed and ratified the International Covenant on Civil and Political Rights in 1992 and the International Convention on the Elimination of All Forms of Racial Discrimination in 1994,” which strictly prohibit all forms of discrimination.<sup>40</sup> Despite this, the Supreme Court has stated that governmental action violates the Equal Protection Clause of the U.S. Constitution only when the state actor intended to discriminate; actions that merely lead to discriminatory impact are not prohibited.<sup>41</sup> This is particularly problematic in the context of police brutality cases, where it is extremely difficult to prove discriminatory intent in a high-stakes situation, such as an officer shootout.<sup>42</sup> Moreover, this is concerning given a state’s duty to protect the lives of its citizens: a duty of police officers who act as agents of the state.<sup>43</sup> As such, the public has started to have conversations about systemic racism and policing, all involving the “longstanding concerns about violations of human rights.”<sup>44</sup> Specifically, these concerns include the rights to life, to security of the person, to equal protection of the law, to freedom from discrimination, and to freedom of expression and peaceful assembly.<sup>45</sup>

According to Amnesty International, more than one thousand people are killed each year by police in the United States.<sup>46</sup> Although

---

40. AMNESTY INTERNATIONAL, USA: THE WORLD IS WATCHING, MASS VIOLATIONS BY U.S. POLICE OF BLACK LIVES MATTER PROTESTER’S RIGHTS 5 n.1, 14 (2020).

41. See *Washington v. Davis*, 426 U.S. 229, 239 (1976) (“But our cases have not embraced the proposition that a law or other official act, without regard to whether it reflects a racially discriminatory purpose, is unconstitutional solely because it has a racially disproportionate impact.”).

42. See AMNESTY INTERNATIONAL, *supra* note 40, at 16.

43. *Id.*

44. *Id.* at 5. “Under the International Covenant on Civil and Political Rights (ICCPR) and the International Convention on the Elimination of all forms of Racial Discrimination (ICERD), the prohibition of discrimination encompasses not only policies and practices that are discriminatory in purpose, but also those that are discriminatory in effect.” *Id.* at 14.

45. *Id.* at 19.

46. The problem is that the U.S. government does not collect data on these deaths and make it readily available to the public, so the actual exact number of people killed by police each year is unknown and undocumented. The data that does exist demonstrates that African Americans are disproportionately impacted by police killings. *Id.* at 5.



African Americans represent “13.2% of the U.S. population, they represent 24.2% of deaths from police use of firearms.”<sup>47</sup> The U.S. Department of Justice and other federal agencies do not adequately document how many people in the United States are killed as a result of police use of force.<sup>48</sup> Many non-governmental organizations (NGOs) have stepped in to fill the void and document the number of police killings.<sup>49</sup> The estimate as of the year 2020 is that one thousand people are shot and killed by police each year, while hundreds more are killed using other forms of force.<sup>50</sup> For example, 4,925 people died between 2015 and 2019 as a result of police use of firearms alone.<sup>51</sup> Other databases show that annual numbers are much higher when other uses of force are included in addition to firearms.<sup>52</sup>

The use of lethal force against people of color in the United States must be viewed in the context of a wider pattern of racially discriminatory treatment by law enforcement officers.<sup>53</sup> For example, after the police killing of Michael Brown in 2014, a Department of Justice study revealed that 88 percent of all cases between 2010 and August 2014 during which a Ferguson Police Department officer reported using force involved African Americans, even though they comprised

---

47. *Id.* The use of lethal force against people of color in the United States by law enforcement officers should be viewed in context of a wider pattern of racially discriminatory treatment, including unjustified stops and searches, excessive use of force, and racial profiling—all of which is exacerbated by the Supreme Court’s rulings weakening traditional methods of addressing police misconduct. See discussion *infra* Part II.

48. AMNESTY INTERNATIONAL, *supra* note 40, at 5. For example, the FBI collects voluntarily submitted data regarding deaths from police actions and disseminates this data only upon request. See generally TOM MCEWEN, NATIONAL DATA COLLECTION ON POLICE USE OF FORCE 21 (1996).

49. AMNESTY INTERNATIONAL, *supra* note 40, at 12.

50. *Id.*

51. Data from *The Washington Post* also shows that African Americans are disproportionately impacted by law enforcement’s use of lethal force. Although African Americans account for less than 13 percent of the population of the United States, they comprise approximately a quarter of deaths (24.2 percent) from police use of firearms and are killed by police at more than twice the rate of white people. AMNESTY INTERNATIONAL, *supra* note 40, at 12; *Fatal Force*, WASH. POST, (Feb. 15, 2023) <https://www.washingtonpost.com/graphics/investigations/police-shootings-database/> [<https://perma.cc/CJM2-2ZAY>].

52. AMNESTY INTERNATIONAL, *supra* note 40, at 12; see *Mapping Police Violence*, *supra* note 24; FATAL ENCOUNTERS, <https://fatalencounters.org/> [<https://perma.cc/9TQL-2SQX>].

53. AMNESTY INTERNATIONAL, *supra* note 40, at 13. According to the Department of Justice’s Bureau of Justice Statistics, African Americans were more likely to be stopped by police (both in traffic and street stops) than White or Hispanic people in 2015. Unsurprisingly, 2015 is the most recent year for which national data from the government is available. See ELIZABETH DAVIS ET AL., CONTACTS BETWEEN POLICE AND THE PUBLIC, 2015 4 (Bureau of Just. Stat. 2018); Emma Pierson et al., *A Large-Scale Analysis of Racial Disparities in Police Stops Across the United States*, 4 NATURE HUM. BEHAV. (Oct. 2018).

only 67 percent of Ferguson’s population.<sup>54</sup> Additionally, the study concluded that “at each point in the enforcement process there is a higher likelihood that an African American will be subjected to harsher treatment” and that “statistical analysis shows that African Americans are . . . more likely to have force used against them.”<sup>55</sup> In Minneapolis, Minnesota, where George Floyd was killed by police, evidence of police use of force also indicates racial bias. Moreover, between 2008 and 2020, “18,659 cases of use of force by a police officer took place, 62 percent of which involved an African American.” Alarming, African Americans make up only 19.4 percent of the population of Minneapolis.<sup>56</sup> Nonetheless, the Department of Justice has not announced an investigation into this pattern of discriminatory policies and use of force by officers in the Minneapolis Police Department.<sup>57</sup>

### *B. Public Accountability: The Black Lives Matter Movement*

Unfortunately, the disturbing patterns of systemic racism and policing of communities of color have remained largely the same over the past couple decades.<sup>58</sup> Echoing many concerns of the Civil Rights movement that took place in the 1960s, the BLM Movement was created following seventeen-year-old Trayvon Martin’s death at the hands of a so-called concerned citizen.<sup>59</sup> The three female Black

54. U.S. DEP’T OF JUST. C.R. DIV., INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT 62 (2015).

55. AMNESTY INTERNATIONAL, *supra* note 40, at 14; U.S. DEP’T OF JUST. C.R. DIV., *supra* note 54, at 63, 71.

56. AMNESTY INTERNATIONAL, *supra* note 40, at 14.

57. *Id.*

58. For instance, in 1991, California Highway Patrol officers brutally beat an unarmed African American man, Rodney King, during a traffic stop. Despite calls for action by concerned citizens in Los Angeles, the problems inherent to racial and economic disparity and police use of force were not addressed and continue today. See *What 100 Years of History Tells Us About Racism in Policing*, ACLU (Dec. 11, 2020), <https://www.aclu.org/news/criminal-law-reform/what-100-years-of-history-tells-us-about-racism-in-policing> [<https://perma.cc/MQ87-CRKZ>]; see also Colleen Walsh, *Solving Racial Disparities in Policing*, THE HARV. GAZETTE (Feb. 23, 2021), <https://news.harvard.edu/gazette/story/2021/02/solving-racial-disparities-in-policing/> [<https://perma.cc/4AWX-CK9C>] (“This is not the first time in recent decades that high-profile police violence—from the 1991 beating of Rodney King to the fatal shooting of Michael Brown in 2014—ignited calls for change.”). For a discussion about the history of racialized policing, see < *American Police*, NPR (June 4, 2020), <https://www.npr.org/transcripts/869046127> [<https://perma.cc/QV8E-6CWJ>].

59. Jaramilla, *supra* note 28, at 28; Robert M. Bloom & Nina Labovich, *The Challenge of Deterring Bad Police Behavior: Implementing Reforms That Hold Police Accountable*, 71 CASE W. RES. L. REV. 923, 928 (2021). See Mark S. Brodin, *The Murder of Black Males in a World of Non-Accountability: The Surreal Trial of George Zimmerman for the Killing of Trayvon Martin*, 59 HOW. L.J. 765, 766 (2016) (“George Zimmerman was a ‘wannabe’ cop, a ‘neighborhood watch’

organizers who created this Black-centered political and social movement in 2013 were Alicia Garza, Patrisse Cullors, and Opal Tometi.<sup>60</sup> BLM was created to confront the systemic racial inequities in the United States and the disproportionate number of Black Americans who die at the hands of police.<sup>61</sup>

The movement began with the social media hashtag “#BlackLivesMatter” after George Zimmerman was acquitted and found not guilty of second-degree murder in 2012.<sup>62</sup> Zimmerman was “the neighborhood watch volunteer who fatally shot Trayvon Martin, an unarmed black teenager.”<sup>63</sup> This event ignited a national debate on racial profiling and civil rights.<sup>64</sup> Zimmerman had shot Trayvon Martin, claiming he was acting in self-defense.<sup>65</sup> Even President Obama

---

civilian enrolled in criminal justice courses, armed with a semiautomatic handgun, who profiled 17-year-old Trayvon Martin, stalked him, and shot him to death.” (footnotes omitted)).

60. *Black Lives Matter Movement*, HOWARD UNIV. SCH. OF L., <https://library.law.howard.edu/civilrightshistory/BLM> [<https://perma.cc/2RMA-CSUD>]. After the acquittal of George Zimmerman, the man responsible for the killing of seventeen-year-old Trayvon Martin, thousands of people turned to social media to express the pain resulting from the injustice. Alicia Garza, who was particularly struck by the news, began writing a series of Facebook posts titled, “A Love Letter to Black People.” In her final post, she wrote, “Black people. I love you. I love us. Our lives matter.” One friend, Patrisse Cullors, responded to the post, stating #BlackLivesMatter. Another mutual friend, Opal Tometi, contributed her support and the movement was born. Isabella Mercado, *The Black Lives Matter Movement: An Origin Story*, UNDERGROUND R.R. HIST. PROJECT, <https://undergroundrailroadhistory.org/the-black-lives-matter-movement-an-origin-story/> [<https://perma.cc/3R5H-6LNE>]; see also Nicole Gaither, *Trademarking a Movement: The Branding of Black Lives Matter*, 14 ABA LANDSLIDE 40, 42 (2021); Garrett Chase, *The Early History of the Black Lives Matter Movement, and The Implications Thereof*, 18 NEV. L.J. 1091, 1092–96 (2018) (discussing the beginnings and history of the BLM Movement).

61. Bloom & Labovich, *supra* note 60, at 928–29; see also, Frank Leon Roberts, *How Black Lives Matter Changed the Way Americans Fight for Freedom*, ACLU (July 13, 2018), <https://www.aclu.org/news/racial-justice/how-black-lives-matter-changed-way-americans-fight> [<https://perma.cc/RRB6-8W6Q>] (explaining how “the push for Black liberation from state-inflicted violence has evolved into one of the most influential social movements of the post-civil rights era”).

62. *Black Lives Matter Movement*, *supra* note 60.

63. Lizette Alvarez & Cara Buckley, *Zimmerman is Acquitted in Trayvon Martin Killing*, N.Y. TIMES (July 13, 2013), <https://www.nytimes.com/2013/07/14/us/george-zimmerman-verdict-trayvon-martin.html> [<https://perma.cc/CPH8-V8C9>]; Mark Berman, *George Zimmerman Won't Face Civil Rights Charges in Trayvon Martin's Death*, WASH. POST (Feb. 24, 2015, 6:49 PM), <https://www.washingtonpost.com/news/post-nation/wp/2015/02/24/george-zimmerman-wont-face-civil-rights-charges-in-trayvon-martins-death/> [<https://perma.cc/75YW-GPY7>]; Karen Grigsby Bates, *A Look Back at Trayvon Martin's Death, and the Movement It Inspired*, NPR (July 31, 2018, 7:34 AM), <https://www.npr.org/sections/codeswitch/2018/07/31/631897758/a-look-back-at-trayvon-martins-death-and-the-movement-it-inspired> [<https://perma.cc/YKT4-ELVP>]; Lauren Gambino & Oliver Laughland, *Three Years After Trayvon Martin, A New Civil Rights Movement Grows In Strength*, THE GUARDIAN (Feb. 27, 2015), <https://www.theguardian.com/us-news/2015/feb/27/trayvon-martin-new-civil-rights-movement-grows-strength> [<https://perma.cc/KB85-HHNN>].

64. Alvarez & Buckley, *supra* note 63.

65. *Id.*

weighed in after the shooting, expressing sympathy for Trayvon Martin's family and stating: "If I had a son, he'd look like Trayvon."<sup>66</sup> Outside of the courthouse on the day of Zimmerman's acquittal, hundreds of protestors gathered and were chanting statements such as, "No justice, no peace!"<sup>67</sup>

The BLM Movement "grew nationally in 2014 after the deaths of Michael Brown in Missouri and Eric Garner in New York."<sup>68</sup> Since then, the movement has established a worldwide presence, particularly after the death of George Floyd at the hands of the police in Minneapolis, Minnesota.<sup>69</sup> Although the movement was ignited by the shooting of Black Americans by the police, it gained additional traction from many other forms of injustice and manifestations of systemic racism.<sup>70</sup> Since its expansion, "BLM has used its large, international platform

66. See *id.*; Jackie Calmes, *A Personal Note as Obama Speaks on Death of Boy*, N.Y. TIMES (Mar. 23, 2012), <https://www.nytimes.com/2012/03/24/us/politics/obama-talks-of-tragedy-not-race-in-florida-killing.html> [<https://perma.cc/R8P2-BVHU>].

67. Alvarez & Buckley, *supra* note 63.

68. *Black Lives Matter Movement*, *supra* note 60. For example, uprisings resulted after Eric Garner, an unarmed African American man, was placed in a chokehold by a New York City police officer that resulted in his death on July 17, 2014. In protest, BLM marchers chanted, "I can't breathe!" Similarly, more protests erupted following the death of eighteen-year-old Michael Brown, who was fatally shot on August 9, 2014, by a white Missouri police officer. BLM protestors chanted, "Hands up, don't shoot!" to emphasize how Brown raised his hands in surrender to no avail. See also Monica Anderson, *The Hashtag #BlackLivesMatter Emerges: Social Activism on Twitter*, PEW RSCH. CTR. (Aug. 15, 2016), <https://www.pewresearch.org/internet/2016/08/15/the-hashtag-blacklivesmatter-emerges-social-activism-on-twitter/#fnref-16486-9> [<https://perma.cc/E76U-VX34>]. The #BlackLivesMatter hashtag appeared an average of 58,747 times per day during the three-week period following Brown's death. Additionally, the use of the hashtag increased even more dramatically three months later when the grand jury decided not to indict the officer involved in Brown's death. During the subsequent three weeks, the hashtag was used 1.7 million times. After late 2014, the #BlackLivesMatter hashtag has had a continuous presence on Twitter but has had particular notoriety upon the occurrence of specific events. For instance, the day after the grand jury decided not to indict police officers in the death of Eric Garner, when #BlackLivesMatter appeared 189,210 times in one day. *Id.*

69. *Black Lives Matter Movement*, *supra* note 60; see AMNESTY INTERNATIONAL, *supra* note 40, at 5 ("On 25 May 2020, George Floyd was detained, tortured and extrajudicially executed by Minneapolis Police Department officers . . . His death sparked widespread protests across the USA and the world and a long-overdue conversation about systemic racism and policing.") As part of this conversation, Amnesty International created a report highlighting the failure "to limit the use of force by law enforcement to situations where it is necessary and proportionate to an actual threat." *Id.* at 6; see also Alex Erdekian, *Powerful Photos of Black Lives Matter Protests Around the World*, TRAVELER (June 10, 2020), <https://www.cntraveler.com/gallery/black-lives-matter-protests-around-the-world> [<https://perma.cc/R345-KCU9>] ("In Los Angeles, Athens, Tel Aviv, Sydney, and Mexico City, protestors have left their homes and taken to the streets amid the coronavirus pandemic to honor Floyd, to stand against racism, and to demand justice for others killed by the police.").

70. Bloom & Labovich, *supra* note 59, at 928–29; see also Linda S. Greene et. al., *Talking About Black Lives Matter and #MeToo*, 34 WIS. J.L. GENDER & SOC'Y 109 (2019) (discussing the similarities and relationship between the Black Lives Matter and #MeToo movements).

to raise awareness of injustices occurring across the United States, including the murders at the hands of police” of Eric Garner, Michael Brown, and Tamir Rice in 2014, Freddie Gray in 2015, and, more recently, George Floyd and Breonna Taylor in 2020.<sup>71</sup>

BLM activists have also been heavily involved in suggesting proposals aimed at reducing policing violence. One campaign is known as “Campaign Zero” and features a set of ten proposals, including “the establishment of an all-civilian oversight structure with disciplinary power that includes a police commission and a civilian complaint office,” prohibiting chokeholds and reevaluating use-of-force practices, and increased and improved training of officers.<sup>72</sup>

While state statutes regarding the use of lethal force have hardly changed, some progress has occurred.<sup>73</sup> For example, in 2019, California enacted a law that revised its use-of-lethal-force statute to conform to federal constitutional standards.<sup>74</sup> The impact of the BLM

71. Bloom & Labovich, *supra* note 59, at 929.

72. Jaramilla, *supra* note 28, at 30; Audie Cornish et al., *Black Lives Matter Publishes ‘Campaign Zero’ Plan to Reduce Police Violence*, NPR (Aug. 26, 2015, 5:42 PM), <https://www.npr.org/2015/08/26/434975505/black-lives-matter-publishes-campaign-zero-plan-to-reduce-police-violence> [https://perma.cc/KQ8B-N6EK]; *Solutions*, CAMPAIGN ZERO, <https://www.joincampaignzero.org/solutions#solutionsoverview> [https://perma.cc/R4CE-NANT]. Campaign Zero is a project started by the We The Protesters nonprofit organization, which analyzes policing practices across the country and conducts research for solutions to end police violence. *We Can Live in a World Beyond Policing*, CAMPAIGN ZERO, <http://www.wetheprotesters.org/> [https://perma.cc/SEC5-JUZX]. After the death of George Floyd in June 2020, Campaign Zero launched the “8 Can’t Wait” campaign. This campaign advances eight concrete policy reforms to be immediately implemented with zero financial cost: 1) Ban chokeholds and strangleholds; 2) Require de-escalation of situations; 3) Require a warning before shooting; 4) Require that all alternatives be exhausted before shooting; 5) Require officers to intervene when excessive force is being used; 6) Ban shooting at moving vehicles; 7) Establish a use-of-force continuum (require that a response be within the level of force that is appropriate for the situation); and 8) Require comprehensive reporting. Jaramilla, *supra* note 28, at 31.

73. AMNESTY INTERNATIONAL, *supra* note 40, at 16; *see also* Ram Subramanian & Leily Arzy, *State Policing Reforms Since George Floyd’s Murder*, BRENNAN CTR. FOR JUST. (May 21, 2021), <https://www.brennancenter.org/our-work/research-reports/state-policing-reforms-george-floyds-murder> [https://perma.cc/T9DW-QWE4] (“In response to these community-led movements—many of which rallied around calls to ‘Defund the Police’—cities and counties have begun restructuring how local budgets and law enforcement are deployed in service of public safety. For example, Austin, Los Angeles, and at least 12 other cities pledged to cut police budgets with plans to reinvest in community programs such as supportive housing, violence prevention, and other services.”).

74. Assemb. B. 392, 2019 Leg., Reg. Sess. (Cal. 2019); AMNESTY INTERNATIONAL, *supra* note 40, at 16 (“The law now requires law enforcement to use lethal force only as a ‘necessary’ response to a threat—not merely when it would be ‘objectively reasonable’—in defense of human life. It also requires that the use of deadly force in each situation be viewed through the totality of the circumstances, including the conduct of the officer leading up to the incident, a standard which goes beyond current US constitutional requirements which uses the ‘reasonable officer’ standard by which a jury is to judge the officer’s actions. Lastly, the law establishes that lethal force is not

Movement was felt internationally in 2020 as people across the globe called for reform of police practices and systemic racism more broadly.<sup>75</sup> In terms of police accountability within the legal system, Derek Chauvin, the officer who kneeled on Floyd's neck until his subsequent death, "was convicted of unintentional second-degree murder, third-degree murder and second-degree man slaughter."<sup>76</sup> Importantly, the longstanding "Blue Wall of Silence"<sup>77</sup> was shattered as the police chief and other supervisory officers in his department testified against him.<sup>78</sup> Additionally, "[t]he United States Justice Department, under the Biden administration, has shown a renewed interest in overseeing various police departments."<sup>79</sup>

Moreover, in July 2020, Mayor Eric Garcetti and the Los Angeles City Council heard the unyielding demand from the public to "defund the police," and approved "a \$150 million cut to the Los Angeles Police Department's budget . . . for the following fiscal year."<sup>80</sup> Subsequently, "Mayor Garcetti committed to reallocating funds to communities of color to provide 'jobs, education and healing.'"<sup>81</sup> It is evident that the BLM Movement was an impetus for government reform, as it prompted city leaders in Los Angeles "to publicly acknowledge systemic racism in policing."<sup>82</sup> This acknowledgement was an essential

---

justified when the person poses a threat only to themselves."); see *Tennessee v. Garner*, 471 U.S. 1, 7 (1985); *Graham v. Connor*, 490 U.S. 386, 388 (1989).

75. Bloom & Labovich, *supra* note 59, at 930 (emphasizing the global impact of the 2020 BLM Movement).

76. Jaramilla, *supra* note 28, at 30; see Laurel Wamsley, *Derek Chauvin Found Guilty of George Floyd's Murder*, NPR (Apr. 20, 2021, 5:37 PM), <https://www.npr.org/sections/trial-over-killing-of-george-floyd/2021/04/20/987777911/court-says-jury-has-reached-verdict-in-derek-chauvins-murder-trial> [https://perma.cc/9ZAN-QKL2].

77. This term denotes the secrecy among police officers, who are expected to refrain from reporting misconduct of fellow officers and even lie in order to protect them. This includes cover-ups of police brutality, racism, and murder. "The 'Blue Wall of Silence' is heavily intertwined with police union policies" and has been recognized in "academia, news, and court opinions as a significant barrier to holding police officers accountable for their actions." Jaramilla, *supra* note 28, at 32; Owen Doherty, *A Reform to Police Department Hiring: Preventing the Tragedy of Police Misconduct*, 68 CASE W. RES. L. REV. 1259, 1280–81 (2018).

78. See Bloom & Labovich, *supra* note 59, at 985.

79. *Id.*

80. Jaramilla, *supra* note 28, at 31; see Tom Tapp, *Los Angeles Mayor Eric Garcetti, City Officials Cutting \$100 Million-\$150 Million from LAPD Budget, Funds to Be Reinvested in Communities of Color*, DEADLINE (June 3, 2020, 6:37 PM), <https://deadline.com/2020/06/los-angeles-mayor-eric-garcetti-city-officials-cutting-100-150-million-from-lapd-budget-funds-to-be-reinvested-in-communities-of-color-1202950811/> [https://perma.cc/PV6H-YL4V].

81. Jaramilla, *supra* note 28, at 31.

82. *Id.* Councilman Curren D. Price Jr. added, "I want to take this time to acknowledge Black Lives Matter L.A. organizers and others for keeping our feet to the fire and demanding more from our government." *Id.*; see *Los Angeles Slashes Police Budget After Protest Demands*, BARRON'S

step toward changing the system of racialized policing and police brutality.

As a final point, Governor Newsom signed BLM-inspired legislation into law on September 30, 2020.<sup>83</sup> California now bans chokeholds, allows the state Department of Justice to investigate police shootings, and gives counties increased oversight over sheriff's departments.<sup>84</sup> It is evident that "[a]t the legislative level, a number of bills have been introduced in response to the concerns raised by the BLM movement, and a number have already been passed," including SB 2.<sup>85</sup> Though there is much room for improvement, it is important to recognize that social activism, specifically the BLM Movement, proved instrumental in transforming the arena for challenging police misconduct.

## II. TRADITIONAL METHODS OF ADDRESSING POLICE MISCONDUCT

Without an effective administrative process at the state or national level to revoke the certification of law enforcement officials, it is predictable that more instances of misconduct will occur, particularly because traditional remedies have failed to deter police from committing misconduct.<sup>86</sup> It is difficult to prevail in civil damage suits against police officers because the officer is often judgment-proof due to

---

(July 1, 2020), <https://www.barrons.com/news/los-angeles-slashes-police-budget-after-protest-demands-01593649204> [<https://perma.cc/STV8-NE2E>]. Chief Moore simultaneously affirmed his commitment to transparency and earning confidence from the community, stating: "The reforms announced tonight are consistent with my commitment to a Department that builds trust by recognizing the legacy of historical wrongs and acts to tear down any vestiges of racial injustice." Press Release, LAPD, Commitment to Community and Potential Budget Cuts NR20119dm (June 5, 2020), <https://www.lapdonline.org/newsroom/commitment-to-community-and-potential-budget-cuts-nr20119dm/> [<https://perma.cc/9F8Y-28DG>].

83. See Press Release, Off. of Governor Gavin Newsom, Governor Newsom Signs Landmark Legislation to Advance Racial Justice and California's Fight Against Systemic Racism & Bias in Our Legal System (Sept. 30, 2020), <https://www.gov.ca.gov/2020/09/30/governor-newsom-signs-landmark-legislation-to-advance-racial-justice-and-californias-fight-against-systemic-racism-bias-in-our-legal-system/> [<https://perma.cc/KN4X-PS6E>].

84. Assemb. B. 1196, 2020 Leg., Reg. Sess. § 1(a) (Cal. 2020) (prohibiting law enforcement use of carotid restraint or chokeholds); Assemb. B. 1506, 2020 Leg., Reg. Sess. § 1(b) (Cal. 2020) (requiring state prosecutors to "investigate incidents of an officer-involved shooting resulting in the death of an unarmed civilian"); Assemb. B. 846, 2020 Leg., Reg. Sess. §§ 1(f), 3(a) (Cal. 2020) (addressing deep systemic issues of bias within law enforcement agencies by requiring evaluations of peace officers to include screening for "bias against race or ethnicity, gender, nationality, religion, disability, or sexual orientation," and requiring agencies to change job descriptions to de-emphasize "paramilitary aspects" and emphasize community interaction).

85. Jaramilla, *supra* note 28, at 31; Press Release, Off. of Governor Gavin Newsom, *supra* note 83.

86. Roger L. Goldman & Steven Puro, *Revocation of Police Officer Certification: A Viable Remedy for Police Misconduct?*, 45 CONST. ST. LOUIS. U. L.J. 541, 546–47 (2001).

qualified immunity.<sup>87</sup> The exclusionary rule, created to prevent the use of probative evidence seized from a defendant in violation of his constitutional rights, has no real impact on the officer who committed the violation; the officer remains unpunished despite the imposition of the exclusionary rule in a given case.<sup>88</sup> Finally, despite having state agencies that regulate police officer training and certification, such as a Peace Officer Standards and Training Commission, the agency is inconsequential in addressing police misconduct without the ability of revoking certification when necessary.

### A. Section 1983 and Qualified Immunity

Plaintiffs whose civil rights have been violated can sue law enforcement officers and departments under 42 U.S.C. § 1983.<sup>89</sup> This statute is the “primary legal tool to challenge civil rights violations” and has been “instrumental in holding governmental actors,” such as police departments, accountable to citizens they injure.<sup>90</sup> Section 1983

87. *Id.* at 547. Likewise, the criminal prosecution of officers is extremely rare, and convincing jurors to convict an officer is even more difficult. Roger Goldman & Steven Purro, *Decertification of Police: An Alternative to Traditional Remedies for Police Misconduct*, 15 HASTINGS CONST. L.Q. 45, 59 (1987); Mark Berger, *Law Enforcement Control: Checks and Balances for the Police System*, 4 CONN. L. REV. 467, 478 (1971). Despite having the authority to prosecute officers criminally for civil rights violations under 18 U.S.C. § 242, prosecutors are typically reluctant to do so. *Decertification of Police*, *supra*, at 61; *see, e.g.*, Louis B. Schwartz, *Complaints Against the Police: Evidence of the Community Rights Division of the Philadelphia District Attorney's Office*, 118 U. PA. L. REV. 1023, 1024–25 (1970).

88. Goldman & Puro, *supra* note 86, at 547.

89. William Baude, *Is Qualified Immunity Unlawful?*, 106 CALIF. L. REV. 45, 49 (2018). The statute is colloquially known as “section 1983” because it is codified at 42 U.S.C. § 1983. It was first enacted as a section of the 1871 Ku Klux Act during Reconstruction to combat civil rights violations occurring in the southern states of the United States. *Id.* As currently codified in the U.S. Code, the statute states:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer’s judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 U.S.C. § 1983.

90. Dani Kritter, *The Overlooked Barrier to Section 1983 Claims: State Catch-All Statutes of Limitations*, CALIF. L. REV. (Mar. 2021), <https://www.californialawreview.org/the-overlooked-barrier-to-section-1983-claims-state-catch-all-statutes-of-limitations/> [https://perma.cc/4PPB-86RK].



“creates a cause of action for either money damages or injunctive relief against” government officials who violate either the Constitution or a federal law.<sup>91</sup> Section 1983 suits are not only meant to compensate plaintiffs for their injuries, but also serve to deter future misconduct by police.<sup>92</sup>

Initially, the Supreme Court applied Section 1983 in a straightforward manner. However, over recent years, the Supreme Court has left Section 1983 meaningless, as it created the legal defense of qualified immunity, and eventually vastly expanded it.<sup>93</sup> In 1967, the Supreme Court granted qualified immunity to police officers in *Pierson v. Ray*.<sup>94</sup> In *Pierson*, the Court held that an officer may assert a good-faith defense, granting immunity from prosecution.<sup>95</sup> Fifteen years later, in *Harlow v. Fitzgerald*,<sup>96</sup> the Supreme Court drastically expanded the defense by making it so that even officials who violate an individual’s rights maliciously will be immune, unless the victim can show that his or her right was “clearly established.”<sup>97</sup>

91. *Id.* The standing doctrine makes it increasingly difficult for plaintiffs to bring claims that allow for injunctive relief against law enforcement. *See* *Los Angeles v. Lyons*, 461 U.S. 95, 101–05 (1983) (finding no standing to seek injunctive relief because there was not a “real and immediate” threat of future injury). Thus, most plaintiffs rely primarily on seeking actions for damages. Joanna C. Schwartz, *Who Can Police the Police?*, 2016 U. CHI. LEGAL F. 437, 450 (2016).

92. Schwartz, *supra* note 91, at 450–451; *see, e.g.*, *City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687, 727 (1999) (Scalia, J., concurring) (“[Section 1983] is designed to provide compensation for injuries arising from the violation of legal duties, and thereby, of course, to deter future violations.” (citation omitted)); *City of Riverside v. Rivera*, 477 U.S. 561, 575 (1986) (“[T]he damages a plaintiff recovers contributes significantly to the deterrence of civil rights violations in the future.”); *Memphis Cmty. Sch. Dist. v. Stachura*, 477 U.S. 299, 307 (1986) (“Deterrence . . . operates through the mechanism of damages that are compensatory . . .” (emphasis omitted)).

93. Amir H. Ali & Emily Clark, *Qualified Immunity Explained*, THE APPEAL (Jun. 20, 2019), <https://theappeal.org/qualified-immunity-explained/> [<https://perma.cc/ZY8E-H53D>]; *see* *Pierson v. Ray*, 386 U.S. 547 (1967) (creating the qualified immunity defense); *see* Scott Michelman, *The Branch Best Qualified to Abolish Immunity*, 93 NOTRE DAME L. REV. 1999, 2003 (2018) (discussing how the Court “fleshed out and tinkered” with the “good faith and probable cause” defense); *see also* *Wood v. Strickland*, 420 U.S. 308, 318 (1975) (stating that qualified immunity was available to both police officers and other non-law enforcement personnel, such as school officials); *Butz v. Economou*, 438 U.S. 478, 504 (1982) (extending qualified immunity to federal officials).

94. 386 U.S. at 556–57 (1967) (holding that § 1983 implicitly incorporated absolute immunity for judges and the defense of “good faith and probable cause” for police officers); *see also* Marcus R. Nemeth, Note, *How Was That Reasonable? The Misguided Development of Qualified Immunity and Excessive Force by Law Enforcement Officers*, 60 B.C. L. REV. 989, 999 (2019) (“The origin of qualified immunity lies with the Court’s 1967 holding in *Pierson v. Ray*.”).

95. 386 U.S. at 555–57; Bloom & Labovich, *supra* note 59, at 958.

96. 457 U.S. 800 (1982).

97. *Id.* at 818 (“We therefore hold that government officials performing discretionary functions, generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.”); Ali & Clark, *supra* note 93; *see* *Mullenix v. Luna*, 136 S. Ct. 305, 308 (2015) (per

Currently, “[u]nder the doctrine of qualified immunity, public officials are held to a much lower standard,” as they can be “held accountable only insofar as they violate rights that are ‘clearly established’ in light of existing case law.”<sup>98</sup> This standard shields law enforcement, in particular, from innumerable constitutional violations each year, as it removed the subject inquiry into an officer’s motivations during a qualified immunity analysis.<sup>99</sup> As a result, a plaintiff had only one way of overcoming qualified immunity: a showing that the officer’s conduct “violate[d] clearly established statutory or constitutional rights of which a reasonable person would have known.”<sup>100</sup> In the Supreme Court’s own words, it protects “all but the plainly incompetent or those who knowingly violate the law.”<sup>101</sup>

Qualified immunity takes away one of the only avenues provided to victims of police violence. This doctrine has hindered the protection of civil rights by, first, making it substantially more difficult for civilians faced with police brutality to obtain relief in court. Second, it deters plaintiffs from even bringing forth claims under Section 1983. Lastly, qualified immunity has led to a failure to deter police from committing future misconduct.

### *B. The Exclusionary Rule and the Good-Faith Exception*

The Warren Court notably decided numerous cases that “provided significant constitutional protections to criminal defendants.”<sup>102</sup>

---

curiam) (holding that the “clearly established” violation must be demonstrated specifically and not “at a high level of generality” (quoting *Ashcroft v. al-Kidd*, 563 U.S. 731, 742 (2011))).

98. Ali & Clark, *supra* note 93.

99. *Harlow*, 457 U.S. at 815–18. Previously, qualified immunity consisted of two alternative prongs, the subjective and objective inquiries. The Court in *Harlow* stated that there were problems inherent in the “subjective prong” of the qualified immunity analysis, such as the fact that questions regarding a government official’s motive shield insubstantial claims from resolution and would potentially subject government officials to burdensome discovery. *See id.* at 815–16. As such, the Court got rid of the subjective analysis prong.

100. *Id.* at 818; Michelman, *supra* note 93, at 2004. Later qualified immunity jurisprudence further expanded the barriers for civil rights plaintiffs in the context of police shootings. *See Ashcroft*, 563 U.S. at 732 (“A Government official’s conduct violates clearly established law when, at the time of the challenged conduct, ‘[t]he contours of [a] right [are] sufficiently clear’ that every ‘reasonable official would [have understood] that what he is doing violates that right.’” (alterations in original) (quoting *Anderson v. Creighton*, 483 U.S. 635, 640 (1987))).

101. *Malley v. Briggs*, 475 U.S. 335, 341 (1986).

102. Bloom & Labovich, *supra* note 59, at 944 (2021); *see, e.g.*, *Katz v. United States*, 389 U.S. 347, 353 (1967) (holding that an expectation of privacy under the Fourth Amendment is based on reasonableness, not solely the trespass doctrine); *Miranda v. Arizona*, 384 U.S. 436, 471–72 (1966) (establishing the *Miranda* Warning, which requires officers to inform arrested individuals of their rights to counsel and silence when arrested); *Mapp v. Ohio*, 367 U.S. 643, 657 (1961) (requiring states to use the exclusionary rule remedy); Corinna Barrett Lain, *Countermajoritarian Hero or*

This is true, as the “Warren Court examined a number of police practices resulting in violations of an individual’s constitutional rights, such as interrogations, eye-witness identifications, and searches and seizures.”<sup>103</sup> The Supreme Court aimed to deter police from violating constitutional rights and established the “exclusionary rule,” which excludes illegally obtained evidence at trial.<sup>104</sup>

The exclusionary rule is a doctrine that dictates the exclusion of evidence that is obtained in violation of the rights guaranteed by the Constitution in a defendant’s criminal trial.<sup>105</sup> Most often, the exclusionary rule is implicated when a criminal defendant’s Fourth Amendment rights are violated, but it also applies to other violations of constitutional rights, such as the Fifth Amendment privilege against self-incrimination and the Sixth Amendment right to the assistance of counsel.<sup>106</sup> One “primary purpose of the exclusionary rule is to deter officers from violating the law in future investigations and arrests.”<sup>107</sup>

In *Mapp v. Ohio*,<sup>108</sup> the Warren Court applied the exclusionary remedy for constitutional violations—established in *Weeks v. United States*<sup>109</sup> for federal actions—to the states.<sup>110</sup> Without the exclusionary

---

*Zero? Rethinking the Warren Court’s Role in the Criminal Procedure Revolution*, 152 U. PA. L. REV. 1361, 1362 n.7 (2004) (defining the Warren Court’s period as beginning in October 1953 and ending in June 1969).

103. Bloom & Labovich, *supra* note 59, at 945.

104. William Heffernan & Richard Lovely, *Evaluating the Fourth Amendment Exclusionary Rule: The Problem of Police Compliance with the Law*, 24 U. MICH. J.L. REFORM 311, 311 (1991); *Mapp*, 367 U.S. at 656 (applying the exclusionary rule to the states) (“Only last year the Court itself recognized that the purpose of the exclusionary rule ‘is to deter—to compel respect for the constitutional guaranty [contained in the Fourth Amendment] in the only effectively available way—by removing the incentive to disregard it.’” (quoting *Elkins v. United States*, 364 U.S. 206, 217 (1960))). The exclusionary rule, first applied in *Weeks v. United States* in 1914, provided a remedy for an individual subjected to an illegal search under the Fourth Amendment and facing federal charges. *Weeks v. United States*, 232 U.S. 383, 398 (1914) (holding that evidence obtained illegally could not be used against the defendant at trial, and thus, establishing the exclusionary rule in federal prosecutions).

105. Goldman & Puro, *supra* note 86, at 52.

106. *Id.*; see *Mapp*, 367 U.S. at 657 (exclusionary rule used for Fourth Amendment violation); *Miranda*, 384 U.S. at 469 (exclusionary rule used for violations of the Fifth Amendment privilege against self-incrimination); *Massiah v. United States*, 377 U.S. 201, 205–06 (1964) (exclusionary rule used for violation of the Sixth Amendment right to the assistance of counsel).

107. Schwartz, *supra* note 91, at 454.

108. 367 U.S. 643 (1961).

109. 232 U.S. 383 (1914).

110. *Mapp*, 367 U.S. at 651. The exclusionary rule, first applied in *Weeks v. United States* in 1914, provided a remedy for an individual subjected to an illegal search under the Fourth Amendment and facing federal charges. *Weeks*, 232 U.S. at 396 (holding that evidence obtained illegally could not be used against the defendant at trial, and thus, establishing the exclusionary rule in federal prosecutions). Noting that the Fourth Amendment assures the right to be safe from “unreasonable searches and seizures,” but fails to provide an explicit remedy for those subjected to illegal

remedy, the Court found that the Fourth Amendment would have no teeth and be a mere “form of words.”<sup>111</sup>

The Burger, Rehnquist, and Roberts Courts have largely cut back on the individual rights created by the Warren Court, and have tended to favor law enforcement practices.<sup>112</sup> Thus, the exclusionary rule doctrine began to lose its value starting in 1974 when the majority of the Supreme Court acted to limit the exclusionary rule in Fourth Amendment cases.<sup>113</sup> In 1984, in *United States v. Leon*,<sup>114</sup> the Supreme Court created a good-faith exception to the exclusionary rule in situations when police officers mistakenly relied on a warrant that was later determined to be invalid.<sup>115</sup>

---

searches, the Court determined that the appropriate remedy would be exclusion of the illegally obtained evidence at trial. *Id.* at 389 (quoting U.S. CONST. amend. IV). Following *Weeks* and prior to *Mapp*, the Court declined to apply the exclusionary remedy to the states in *Wolf v. Colorado*, a 1949 decision. 338 U.S. 25, 25 (1949) (“[T]he Fourteenth Amendment did not subject criminal justice in the States to specific limitations.”).

111. *Mapp*, 367 U.S. at 648.

112. A number of cases demonstrate cutbacks to rights and procedures created by the Warren Court. The *Miranda* decision’s impact has been significantly reduced. *See Berghuis v. Thompkins*, 560 U.S. 370, 382 (2010) (requiring a suspect, paradoxically, to speak to invoke the right to silence because remaining silent for three hours is too “ambiguous”); *New York v. Quarles*, 467 U.S. 649, 651 (1984) (creating an exception to the *Miranda* warning requirement when there is a threat to “public safety”); *Connecticut v. Barrett*, 479 U.S. 523, 526–27 (1987) (determining that a defendant’s *Miranda* waiver is legitimate even if he or she has given mixed signals about his or her willingness to engage with law enforcement, such as an unwillingness to write a confession but a willingness to speak to officers); *North Carolina v. Butler*, 441 U.S. 369, 375–76 (1979) (deciding that waiver of *Miranda* rights does not need to be explicit and implicit waivers may be sufficient). Similarly, the eyewitness identification standards created by the Warren Court have received much negative treatment. *See Perry v. New Hampshire*, 565 U.S. 228, 232–33 (2012) (holding that eyewitness identifications are admissible, even when suggestive, so long as the police themselves were not responsible for the suggestive nature of the procedure); *Manson v. Brathwaite*, 432 U.S. 98, 113–14 (1977) (casting aside *Stovall v. Denno*, which required a totality-of-the-circumstances test for eyewitness identifications and excluded those determined to be suggestive, and declaring “reliability is the linchpin,” such that even suggestive identifications may be admissible if reliable). Even Sixth Amendment rights have been reduced after the Warren Court’s term. *See United States v. Ash*, 413 U.S. 300, 300–02 (1973) (holding that the Sixth Amendment right to counsel does not apply to post-indictment photo arrays); *Kirby v. Illinois*, 406 U.S. 682, 688–89 (1972) (determining that the Sixth Amendment right to counsel does not attach until “the initiation of adversary judicial criminal proceedings,” which does not include pre-indictment lineups).

113. *Goldman & Puro*, *supra* note 86, at 52; *see United States v. Calandra*, 414 U.S. 338, 349 (1974) (“In deciding whether to extend the exclusionary rule to grand jury proceedings, we must weigh the potential injury to the historic role and functions of the grand jury against the potential benefits of the rule as applied in this context.”).

114. 468 U.S. 897 (1984).

115. *Id.* at 898–99 (extending the balancing test approach to criminal trials and holding that the exclusionary rule does not apply when an individual acts in good-faith reliance upon a warrant later determined to be lacking probable cause); *see also Massachusetts v. Sheppard*, 468 U.S. 981, 981 (1984) (companion case to *Leon*). The Supreme Court expanded the good-faith exception significantly. *See Arizona v. Evans*, 514 U.S. 1, 4 (1995) (holding that good-faith reliance on an incorrect, outstanding arrest warrant will not result in the exclusionary rule being applied, and creating an

Recently, the Supreme Court determined in *Herring v. United States*<sup>116</sup> that even if an officer wrongfully relies on the negligent bookkeeping of another officer, the good-faith exception applies. Arguably, the so-called deterrent effect present at the beginning of exclusionary remedy jurisprudence has dissipated.<sup>117</sup> The Court held that even in a situation where a mistake on behalf of law enforcement is directly attributable to the law enforcement agency, the deterrent effect of the exclusionary rule is negligible.<sup>118</sup> Many other exceptions crafted by the Supreme Court have swallowed the remedy and sent a clear message to law enforcement officers: so long as you are acting in what the Court considers “good-faith,” there will be no repercussions to your actions, even if they are wrongful.<sup>119</sup>

*C. State Regulation: Commission on Peace Officer Standards and Training (POST)*

Most mechanisms for police accountability address police misconduct only after a civil rights violation occurs.<sup>120</sup> Additionally, these mechanisms have very limited power to actually implement changes in law enforcement policies that have proved ineffective in stopping misconduct.<sup>121</sup> In contrast, Peace Officer Standards and Training (POST) commissions impose training requirements, policy standards, and hiring criteria that could prevent harm and misconduct *before* they even occur.<sup>122</sup>

---

exception for good-faith reliance on an incorrect, outstanding arrest warrant); *Illinois v. Krull*, 480 U.S. 340, 356–57 (1987) (finding an exception to the exclusionary rule when an officer relies upon an unconstitutional statute); *Bloom & Labovich*, *supra* note 59, at 949. The Court also significantly limited the exclusionary rule in other aspects. *See Immigr. Naturalization Serv. v. Lopez-Mendoza*, 468 U.S. 1032, 1050 (1984) (refusing to apply the exclusionary rule to intentional violations of the Fourth amendment).

116. 555 U.S. 135 (2009).

117. *Id.* at 147.

118. *Id.*

119. *Bloom & Labovich*, *supra* note 59, at 958; For example, in expanding yet another exception to the exclusionary rule, the Supreme Court in *Utah v. Strieff* held that the evidence seized by a police officer following an unlawful stop was admissible because the discovery of an outstanding warrant “attenuated the connection” between the unlawful seizure and the police misconduct. 136 S. Ct. 2056, 2059 (2016).

120. Hilary Rau et. al., *State Regulation of Policing: POST Commissions and Police Accountability*, 11 U.C. IRVINE L. REV. 1349, 1353 (2021). For example, the Department of Justice Civil Rights Division can mandate policy changes only if a law enforcement agency has engaged in a pattern or practice of constitutional violations. 34 U.S.C. § 12601(a).

121. Rau et al., *supra* note 120, at 1353.

122. *Id.*

POST commissions are statewide regulatory bodies that are responsible for governing law enforcement agencies at the local level.<sup>123</sup> In nearly every state, to become a law-enforcement officer at any level, an applicant must first obtain certification—essentially an occupational license—from a state-level licensing entity.<sup>124</sup> That is where POST comes in. POST commissions determine the eligibility and qualifications for police employment, and regulate the content and type of training officers receive.<sup>125</sup> Additionally, most POST commissions can revoke the certification of officers who commit serious misconduct or fail to meet continuing eligibility requirements set by the commission.<sup>126</sup> In some states, they also create mandatory policy standards that all departments must meet or exceed.<sup>127</sup> Like boards that regulate doctors and lawyers, POST commissions set training and selection standards, administer a licensing exam, require continuing education, and revoke licenses—or enact less serious disciplinary measures—for defined misconduct.<sup>128</sup> Some states permit citizens to trigger a POST investigation by notifying the POST commission of suspected conduct warranting decertification by the officer. In other states, the POST commission can get involved only if the local department initiates the complaint.<sup>129</sup>

In California, the POST Commission (hereafter “Commission”) was established by the California Legislature in 1959 in order to set minimum selection and training standards for California law enforcement personnel.<sup>130</sup> The Commission consists of fifteen Commissioners appointed by the governor of California.<sup>131</sup> Additionally, the Speaker of the Assembly and the Senate Pro Tempore also each

123. *Id.* at 1352–53. Many state POST commissions revoke the certificates of correctional officers and in certain cases, the state agency’s name may indicate this broader authority. For example, Florida’s revocation agency is the Criminal Justice Standards and Training Commission. Goldman & Puro, *supra* note 86, at 543 n.7.

124. Ben Grunwald & John Rappaport, *The Wandering Officer*, 129 YALE L.J. 1676, 1691 (2020).

125. Rau et al., *supra* note 120, at 1352.

126. *Id.*

127. *Id.*

128. Goldman & Puro, *supra* note 86, at 550–51.

129. *Id.* at 574.

130. *About POST*, STATE OF CAL. (Dec. 30, 2022, 8:44 AM), <https://post.ca.gov/About-Us> [<https://perma.cc/U2MW-XKZ4>]. Regulations are established and adopted in compliance with and by authority of California Penal Code sections 13500 through 13553, and are codified in Title 11, Division 2 of the California Code of Regulations.

131. *The POST Commission*, POST, <https://post.ca.gov/post-commission> [<https://perma.cc/T28W-SQT7>].

appoint one Commissioner.<sup>132</sup> The Attorney General is considered “an ex-officio member,” serving as the eighteenth POST Commissioner.<sup>133</sup> The Commissioners are formed by a group of city and county administrators, law enforcement professionals, educators, public members, and more. According to the Commission website, “[t]he Commission meets four times a year to establish standards, regulations and to give direction to POST staff.”<sup>134</sup> Until the enactment of SB 2, the Commission had the authority to cancel a certificate that was awarded in error or obtained fraudulently, but it did not have the authority to otherwise cancel a previously issued certificate for misconduct.<sup>135</sup> Further, the Commission previously failed to exercise its power to protect the public against police misconduct.<sup>136</sup> By providing the Commission with the power to regulate and actually revoke a police officer’s certification, SB 2 has taken the necessary next step in protecting the well-being of California citizens: creating an administrative solution to deter police misconduct.

### III. WHAT IS SENATE BILL 2?

#### A. *Genesis of Senate Bill 2*

Traditional remedies have failed to address the problem of “the wandering officer,” who is a law-enforcement officer fired by one department, sometimes for serious misconduct, who then finds work at another agency.<sup>137</sup> Wandering officers would often either resign from or get fired by one employer only to move and get rehired at another

---

132. *Id.*

133. *Id.*

134. *Id.* One interesting note is that the Commissioners serve without pay but are reimbursed for their expenses for attending meetings. *Id.*

135. Training Bulletin from Bernard Melekian, Santa Barbara Chief of Police, to Santa Barbara Police Dep’t 2 (Oct. 26, 2021) (on file at <https://santabarbaraca.gov/sites/default/files/2022-06/Senate%20Bill%202%20Training%20Bulletin.pdf>) [hereinafter Training Bulletin from Bernard Melekian].

136. Rau et al., *supra* note 120, at 1356; CAL. PENAL CODE §§ 13500–13553.

137. Grunwald & Rappaport, *supra* note 124, at 1676. Wandering officers are common. *See id.* at 1682–83 (discussing examples of wandering officers); Anthony Fisher, *Why It’s So Hard to Stop Bad Cops from Getting New Police Jobs*, REASON (Sept. 30, 2016, 1:00 PM), <https://reason.com/archives/2016/09/30/why-its-so-hard-to-stop-bad-cops-from-ge> [<https://perma.cc/D6QQ-NNR2>]; Jose Gaspar, *McFarland’s Hiring of Four Police Officers Raises Questions*, BAKERSFIELD CALIFORNIAN (Sept. 13, 2016), [https://www.bakersfield.com/news/jose-gaspar-mcfarlands-hiring-of-four-police-officers-raises-questions/article\\_9dfdf646-d669-5618-a3c7-85ff0eedb4e.html](https://www.bakersfield.com/news/jose-gaspar-mcfarlands-hiring-of-four-police-officers-raises-questions/article_9dfdf646-d669-5618-a3c7-85ff0eedb4e.html) [<https://perma.cc/58EV-XSFH>]; David Kroman, “Disqualifying Conduct” Rarely an Obstacle for Fired Police to Get Rehired, CROSSCUT (Apr. 5, 2016), <https://crosscut.com/2016/04/fired-officers-can-become-hired-officers> [<https://perma.cc/98AV-P3EX>].

law enforcement agency, where they would continue to commit serious acts of misconduct with no repercussions and without being held accountable.<sup>138</sup>

It is evident that there exists a need for an administrative process to hold law enforcement officers accountable, just like for any other professional endeavor. For example, doctors,<sup>139</sup> nurses,<sup>140</sup> and even lawyers need registered approval from a regulating professional board in order to work.<sup>141</sup> Approval by the board in each of these professions has the potential for removal when the professional engages in misconduct. This is especially true in professions that involve a large degree of public trust, in which robust and statewide organizations exist to decertify a person from practicing in a given field, such as the State Bar of California for attorneys and the Medical Board of California for doctors.<sup>142</sup> Although the Commission exists in California, it wasn't until SB 2 that California had a uniform, statewide mechanism to hold law enforcement officers accountable.<sup>143</sup>

The bill was originally introduced as SB 731, following the nationwide protests in 2020 after the murder of George Floyd and amidst calls for stronger police accountability and growing opposition to the concept of qualified immunity.<sup>144</sup> The “seeming lack of consequences” for officers and the “steady stream of police misconduct” fueled a righteous anger and call to action by outraged citizens.<sup>145</sup> Voices from the community made clear that the status quo needed to be changed and the state needed to “hold law enforcement officers accountable for the harm and terror inflicted on communities of

---

138. *Hearing on S.B. 2 Before the S. Comm. on Pub. Safety*, *supra* note 32, at 10.

139. See CAL. BUS. & PROF. CODE § 2001.1 (2023), which is California's Medical Practice Act. The Act states: “Protection of the public shall be the highest priority for the Medical Board of California in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.” *Id.*

140. See CAL. BUS. & PROF. CODE § 2708.1 (2023) (“Protection of the public shall be the highest priority for the Board of Registered Nursing in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.”).

141. *Our Mission: What We Do*, THE STATE BAR OF CAL., <https://www.calbar.ca.gov/About-Us/Our-Mission> [<https://perma.cc/F6FC-72XD>].

142. *Hearing on S.B. 2 Before the Assemb. Comm. on Pub. Safety*, 2021-2022 Leg., Reg. Sess. 18 (Cal. 2021).

143. *Id.* at 17.

144. *Peace Officers: Certification: Civil Rights: Hearing on S.B. 2 Before the S. Judiciary Comm.*, 2021-2022 Leg., Reg. Sess. 1 (Cal. 2021) [hereinafter *Hearing on S.B. 2 Before the S. Judiciary Comm.*].

145. *Id.*



color.”<sup>146</sup> SB 2 created a “statewide mechanism to hold law enforcement officers accountable” and protect the civil rights of Californians.<sup>147</sup> In doing so, SB 2 significantly expanded the Commission’s authority in a variety of ways, one of which was to create a process to investigate and determine the fitness of a peace officer and to suspend or revoke the certification of peace officers who are found to have engaged in “serious misconduct.”<sup>148</sup>

### *B. Decertification*

As previously discussed, existing law prior to SB 2 defines people who are peace officers and the entities that have been authorized to certify them as such.<sup>149</sup> Additionally, pre-existing law requires peace officers to engage in a minimum training requirement in order to be appointed as a peace officer.<sup>150</sup> Some attributes included in the minimum standard determination were: moral character, physical condition, and mental condition.<sup>151</sup> Prior to SB 2, having a felony conviction was one of several factors disqualifying a person to serve as a peace officer, as listed in Government Code section 1029.<sup>152</sup> Nonetheless, the law fostered an environment in which “violence-prone” officers could continue to create an unsafe culture for citizens they have committed to protect because a decertification procedure did not exist.<sup>153</sup> In turn, SB 2 implements a statewide system to combat this reality. It aims to revoke the licenses of law enforcement officers who engage in what the bill defines as serious misconduct or a felony under Government Code section 1029, preventing law enforcement officers terminated from employment at one agency from transferring to another agency where they would continue their wrongdoings.<sup>154</sup>

First and most notably, SB 2 requires law enforcement agencies to employ individuals as peace officers only if they hold a current and

---

146. *Hearing on S.B. 2 Before the S. Comm. on Pub. Safety*, *supra* note 32, at 11.

147. *Id.*

148. *Hearing on S.B. 2 Before the Assemb. Comm. on Pub. Safety*, *supra* note 142, at 1.

149. S.B. 2, 2021-2022 Leg., Reg. Sess. (Cal. 2021). See also California legislation granting POST certification rights. CAL. PENAL CODE § 830 (2023) (defining peace officers); CAL. PENAL CODE § 13510.1 (2023) (granting authority to cancel certificates obtained through fraud, misrepresentation, or administrative error); CAL. CODE REGS. tit. 11 § 1001 (2023); CAL. GOV. CODE § 1029 (2023).

150. S.B. 2, 2021-2022 Leg., Reg. Sess. (Cal. 2021); CAL. CODE REGS. tit. 11 § 1001 (2023).

151. S.B. 2, 2021-2022 Leg., Reg. Sess. (Cal. 2021).

152. *Id.*; CAL. GOV. CODE § 1029 (2023).

153. *What is SB 2?*, NLG, <https://www.nlg-npap.org/ca-sb-2/> [<https://perma.cc/3K8Q-UVBK>].

154. S.B. 2, 2021-2022 Leg., Reg. Sess. (Cal. 2021).

valid basic POST certificate.<sup>155</sup> It also will require “POST to revoke certification when an individual has become ineligible to hold office as a peace officer under Government Code §1029,” or when an individual has been terminated for cause on the basis of a felony conviction and otherwise engaged in “serious misconduct.”<sup>156</sup>

### 1. Felony Decertification

In terms of felony disqualification and decertification, SB 2 enacts a provision that disqualifies a person from holding office as a peace officer or being employed as a peace officer in the state of California, county, city, or other political subdivision for any of the occurrences set forth in Government Code subsections 1029(a)(1)–(11).<sup>157</sup> First, SB 2 adds the provision that disqualifies “[a]ny person who has been discharged from the military for committing an offense, as adjudicated by a military tribunal, which would have been a felony if committed in this state.”<sup>158</sup> The previous version of Government Code section 1029 contained a provision that disqualified individuals convicted of felonies after January 1, 2004, regardless of whether the offense was reduced to a misdemeanor.<sup>159</sup> SB 2 clarified that the scope of disqualification under this provision is broad by explicitly stating that a person “convicted of a crime” includes those who committed “an offense that may be charged as a misdemeanor or felony and that was charged as a felony at the time of the conviction.”<sup>160</sup> This expands the scope of the disqualification provisions of the act.

Moreover, the bill explicitly states that persons convicted of crimes cannot regain eligibility based upon the nature of the sentence imposed.<sup>161</sup> The bill provides that an individual cannot “regain eligibility for peace officer employment based upon any later order of the

155. Training Bulletin from Bernard Melekian, *supra* note 135, at 1; *Hearing on S.B. 2 Before the Assemb. Comm. on Pub. Safety*, *supra* note 142, at 4; CAL. PENAL CODE § 13510.1(a) (2023) (as amended by S.B. 2, 2021-2022 Leg., Reg. Sess. (Cal. 2021)).

156. Training Bulletin from Bernard Melekian, *supra* note 135, at 1; CAL. PENAL CODE § 13510.8 (2023) (added by S.B. 2, 2021-2022 Leg., Reg. Sess. (Cal. 2021)).

157. CAL. PENAL CODE § 13510.8(a)(1) (2023) (added by S.B. 2, 2021-2022 Leg., Reg. Sess. (Cal. 2021)) (“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.”).

158. Compare S.B. 2, 2021-2022 Leg., Reg. Sess. (Cal. 2021), with CAL. GOV. CODE § 1029 (2023).

159. CAL. GOV. CODE § 1029(a)(3) (2004).

160. S.B. 2, 2021-2022 Leg., Reg. Sess. (Cal. 2021) (amending CAL. GOV. CODE § 1029 (a)(4)(B)).

161. *Id.* (amending CAL. GOV. CODE § 1029 (a)(4)(C)).

court setting aside, vacating, withdrawing, expunging, or otherwise dismissing or reversing the conviction,” with a narrow exception where a court “finds the person to be factually innocent of the crime for which they were convicted at the time of entry of the order.”<sup>162</sup> These provisions did not exist in the applicable law prior to the enactment of SB 2.<sup>163</sup>

## 2. Decertification For “Serious Misconduct”

Besides decertification on the basis of a felony, SB 2 also creates another avenue for a peace officer’s certification to be revoked if the peace officer engages in what the bill categorizes as “serious misconduct.”<sup>164</sup> Specifically, the bill 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 for, or has, while employed as a peace officer, otherwise engaged in, any serious misconduct.”<sup>165</sup> In other words, even if a peace officer engages in serious misconduct, but is not terminated for such conduct by supervisors, their certification is still at risk for revocation under this new amendment.

## 3. Defining “Serious Misconduct”

SB 2 states that the Commission must adopt a definition of “serious misconduct” to serve as a criterion for the revocation of certification by January 1, 2023.<sup>166</sup> In doing so, SB 2 leaves the exact definition of “serious misconduct” open to interpretation by the Commission.<sup>167</sup> However, the bill does specify that certain characteristics must be included in the definition. First, the definition of serious misconduct must include acts of dishonesty that relate to either the “reporting, investigation, or prosecution of a crime” or the “investigation of misconduct by, a peace officer or custodial officer.”<sup>168</sup> This language is relevant to deterring the “Blue Wall of Silence,” which inhibits the prosecution of officers in police misconduct cases due to

---

162. *Id.*

163. *See* CAL. GOV. CODE § 1029 (2004).

164. S.B. 2, 2021-2022 Leg., Reg. Sess. (Cal. 2021) (amending CAL. PENAL CODE § 13510.8(a)(2)).

165. *Id.*

166. *Id.* (amending CAL. PENAL CODE § 13510.8(b)).

167. Training Bulletin from Bernard Melekian, *supra* note 135, at 1.

168. S.B. 2, 2021-2022 Leg., Reg. Sess. (Cal. 2021) (amending CAL. PENAL CODE § 13510.8(b)(1)).

2023]

*POLICE ACCOUNTABILITY BEYOND SB 2*

1381

the unlikelihood that fellow officers will report their misconduct.<sup>169</sup> Examples of such dishonesty laid forth by the act include, “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.”<sup>170</sup>

Other requirements under SB 2 that must be included in the definition of “serious misconduct” include abuse of power,<sup>171</sup> physical abuse—which may constitute excessive or unreasonable use of force—and sexual assault.<sup>172</sup> Importantly, the bill addresses one element that breeds a culture for police misconduct: bias. The bill states that the definition of serious misconduct must include demonstrations of “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 . . . inconsistent with a peace officer’s obligation to carry out their duties in a fair and unbiased manner.”<sup>173</sup>

Interestingly, SB 2 sets forth one broad factor that must be included in the provision. It states that the definition of serious misconduct must include “[a]cts that violate the law.”<sup>174</sup> Additionally, it must include acts that “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.”<sup>175</sup> However, the bill does not propose what these acts may

---

169. The “Blue Wall of Silence” refers to “the secrecy among police officers, who are expected to refrain from reporting misconduct of fellow officers and even lying in order to protect them.” The police code of silence has been long observed in academia, news, and court opinions as a significant barrier to holding police officers accountable for their actions. *See Jaramilla, supra* note 28, at 32; Doherty, *supra* note 77, at 1271.

170. S.B. 2, 2021-2022 Leg., Reg. Sess. (Cal. 2021) (amending CAL. PENAL CODE § 13510.8 (b)(1)).

171. Abuse of power “includ[es], but is not limited to, intimidating witnesses, knowingly obtaining a false confession, and knowingly making a false arrest.” S.B. 2, 2021-2022 Leg., Reg. Sess. (Cal. 2021) (amending CAL. PENAL CODE § 13510.8 (b)(2)).

172. S.B. 2, 2021-2022 Leg., Reg. Sess. (Cal. 2021) (amending CAL. PENAL CODE § 13510.8 (b)(3)-(4)). Sexual assault is defined in subdivision (b) of section 832.7 of the California Penal Code.

173. S.B. 2, 2021-2022 Leg., Reg. Sess. (Cal. 2021) (amending CAL. PENAL CODE § 13510.8 (b)(5)).

174. S.B. 2, 2021-2022 Leg., Reg. Sess. (Cal. 2021) (amending CAL. PENAL CODE § 13510.8 (b)(6)). The bill is not clear whether the “law” referred to in this section is specific to criminal law, or whether it also includes civil and administrative law.

175. *Id.*

constitute besides setting forth the general requirement of egregiousness, leaving it open to interpretation by the Commission.<sup>176</sup>

Additionally, SB 2 provides that participation in a law enforcement gang must be included in the definition of serious misconduct.<sup>177</sup> It is apparent that the Los Angeles County Sheriff's Department has a "deputy-gang" epidemic.<sup>178</sup> SB 2 confronts this issue by making clear that such participation in a law enforcement gang will lead to eventual decertification.<sup>179</sup> A law enforcement gang is defined by the bill as a "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 . . . and who engage in a pattern of on-duty behavior that intentionally violates the law or fundamental principles of professional policing."<sup>180</sup> Moreover, it states that such conduct includes harassment, exclusion, discrimination based on a protected category under federal or state antidiscrimination laws, violating agency policy, "the persistent practice of unlawful detention or use of excessive force in circumstances where it is known to be unjustified," falsified police reports, fabrication of evidence, targeting of persons based on protected characteristics, use of alcohol or drugs on duty, and retaliation.<sup>181</sup>

Finally, the bill directs the Commission to include in its definition of "serious misconduct" the "[f]ailure to cooperate with an investigation into potential police misconduct" and the "[f]ailure to intercede when present and observing another officer using force that is clearly beyond that which is necessary."<sup>182</sup> Regarding the language describing failure to intercede when another officer is using beyond necessary force, the standard set forth by SB 2 is to be "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."<sup>183</sup>

---

176. *See id.*

177. *Id.* (amending CAL. PENAL CODE § 13510.8 (b)(7)).

178. *See* Dana Goodyear, *The L.A. County Sheriff's Deputy-Gang Crisis*, THE NEW YORKER (May 30, 2022), <https://www.newyorker.com/magazine/2022/06/06/the-la-county-sheriffs-deputy-gang-crisis> [<https://perma.cc/7U2A-JDHF>]; Cerise Castle, *A Tradition of Violence: The History of Deputy Gangs in the Los Angeles County Sheriff's Department*, KNOCK LA, <https://knock-la.com/tradition-of-violence-lasd-gang-history/> [<https://perma.cc/FN99-A3ZT>].

179. S.B. 2, 2021-2022 Leg., Reg. Sess. (Cal. 2021) (amending CAL. PENAL CODE § 13510.8 (b)(7)).

180. *Id.*

181. *Id.*

182. *Id.*

183. *Id.* (amending CAL. PENAL CODE § 13510.8 (b)(9)).

2023]

*POLICE ACCOUNTABILITY BEYOND SB 2*

1383

#### 4. Who Determines What Constitutes Misconduct?

The Commission is the entity prescribed by law “to set minimum standards for the recruitment and training of peace officers.”<sup>184</sup> The Commission develops training courses and curriculum for aspiring peace officers.<sup>185</sup> Its members are also responsible for establishing a professional certificate program. Essentially, this program awards “basic, intermediate, advanced, supervisory, management, and executive” certifications.<sup>186</sup> These certificates are “awarded on the basis of a combination of training, education, experiences, and other prerequisites.”<sup>187</sup> The purpose of this professional certification training program is to foster “professionalization, education, and experience necessary to adequately accomplish the general police service duties performed by peace officers.”<sup>188</sup>

SB-2 creates the Peace Officer Standards Accountability Division (hereafter “Division”) within the Commission.<sup>189</sup> Specifically, the Division is given the duty “to review investigations conducted by law enforcement agencies.”<sup>190</sup> It is also given the duty to conduct its own additional investigations inquiring “into serious misconduct that may provide grounds for suspension or revocation of a peace officer’s certification,” present findings and recommendations to the Commission and a new board created by SB 2, and bring proceedings seeking the suspension or revocation of certification of peace officers as directed by that board.<sup>191</sup> Thus, the Division is responsible for reviewing the grounds for decertification and making findings regarding whether the basis to decertify an officer exists.<sup>192</sup> The Division is meant to be staffed with a “sufficient number of experienced and able employees that are capable of handling the most complex and varied types of decertification investigations, prosecutions, and administrative proceedings against peace officers.”<sup>193</sup> With that being said, the Division will review reports of serious misconduct to make a determination on

---

184. *Id.* (amending CAL. PENAL CODE § 13510 (a)(1)).

185. *Id.*

186. *Id.*

187. *Id.* (amending CAL. PENAL CODE § 13510.1(c)(1)).

188. *Id.*

189. *Id.*

190. *Id.*

191. *Id.*

192. *Id.*

193. *Id.*

decertification, but it will not conduct internal affairs investigations on behalf of the agency for discipline.<sup>194</sup>

Once the Division has completed its review and has decided to pursue further action based on reasonable grounds for the revocation of certification, the investigation is sent to the Peace Officer Standards Accountability Advisory Board (hereafter “Board”), established by SB 2.<sup>195</sup> The Board will consist of nine members, with almost all being appointed by the Governor.<sup>196</sup> The members of the Board include: one peace officer or “former peace officer with substantial experience at a command rank”; one “peace officer or former peace officer with substantial experience at a management rank in internal investigations or disciplinary proceedings of peace officers”; two members of the public who are not former peace officers but “have substantial experience working at nonprofit or academic institutions on issues related to police accountability” (one member appointed by the Speaker of the Assembly, rather than the Governor); two members of the public who are not former peace officers but “have substantial experience working at community-based organizations on issues related to police accountability” (one member appointed by the Senate Rules Committee, rather than the Governor); two members of the public who are not former peace officers with a “strong consideration given to individuals who have been subject to wrongful use of force likely to cause death by a peace officer, or who are surviving family members of a person killed by wrongful use of deadly force by a peace officer”; and one member who is an attorney and not a former peace officer who has “substantial professional experience involving oversight of peace officers.”<sup>197</sup> Of the initial appointments, three are appointed for a one-year term, three for two-year terms, and three for three-year terms.<sup>198</sup> Based on this rotation, three new members would be appointed every year.<sup>199</sup> No

194. California POST, *Peace Officer Certification Workshop #4: Decertification Process, Accountability Board & Commission*, YOUTUBE (Apr. 25, 2022) [https://www.youtube.com/watch?v=aMfe7TKS\\_3s](https://www.youtube.com/watch?v=aMfe7TKS_3s) [<https://perma.cc/W2F8-9YRN>] [hereinafter *Peace Officer Certification Workshop #4*].

195. *Id.*

196. S.B. 2, 2021-2022 Leg., Reg. Sess. (Cal. 2021) (amending CAL. PENAL CODE § 13509.6(a), (d)). The Governor was to appoint these members by January 1, 2023. As of the writing of this Note, the Board was still pending appointment, with only three members listed. *Peace Officer Standards Accountability Advisory Board*, STATE OF CAL., <https://post.ca.gov/Peace-Of-ficer-Standards-Accountability-Advisory-Board> [<https://perma.cc/JZC5-LJUL>].

197. S.B. 2, 2021-2022 Leg., Reg. Sess. (Cal. 2021).

198. *Id.*

199. Prince James Story, *A Year Since the Signing of SB 2*, THE VOICE (Sept. 19, 2022), <https://theievoice.com/a-year-since-the-signing-of-sb-2/>.

person shall serve more than two terms consecutively.<sup>200</sup> The Governor can also remove any peace officer member whose certification has been revoked and may remove any member of the Board for neglect of duty or other just cause.<sup>201</sup> The members of the Board are responsible for holding public meetings to review the findings after the Division has conducted an investigation, and to later make a recommendation to the Commission on what actions should be taken regarding a peace officer's certification.<sup>202</sup> If grounds for revocation exist, the Board, upon majority vote, will present its findings and recommendation to the Commission.<sup>203</sup> The Commission would then be required to review the recommendation based on "whether there is evidence that reasonably supports the board's conclusion that misconduct is established and, if action is to be taken against an officer's certification, return the determination to the division to commence formal proceedings consistent with the Administrative Procedure Act."<sup>204</sup> If the Commission makes such a finding, it would be required to notify the employing law enforcement agency and the district attorney's office of the county in which the officer is employed.<sup>205</sup> This bill would also ensure that the records related to a peace officer's certification, including the decertification records and the investigation record, be retained for thirty years.<sup>206</sup>

### 5. Investigating Instances of Serious Misconduct

Under SB 2, law enforcement agencies have the responsibility to report any allegation of serious misconduct within ten days to the Commission.<sup>207</sup> The Commission is currently working to obtain a case management system to use as a secure platform for receiving notifications from agencies. It would also offer a platform for the upload and consolidation of information related to these cases.<sup>208</sup> Other avenues

---

200. *Id.*

201. CAL. PENAL CODE § 13509.6.

202. S.B. 2, 2021-2022 Leg., Reg. Sess. (Cal. 2021) (amending CAL. PENAL CODE § 13510.85(3)-(4)).

203. *Peace Officer Certification Workshop #4*, *supra* note 194.

204. S.B. 2, 2021-2022 Leg., Reg. Sess. (Cal. 2021).

205. *Id.*

206. *Id.*

207. California POST, *Peace Officer Certification Workshop #3: Decertification Investigations and Reporting Obligations*, YOUTUBE (Jan. 24, 2023), <https://www.youtube.com/watch?v=H2hNCB5A174> [<https://perma.cc/KRA7-ENV6>] [hereinafter *Peace Officer Certification Workshop #3*].

208. *Id.*



of initiating investigations would be through citizen complaints, Board recommendations to the Commission, Commission direction, and Division-directed investigations.<sup>209</sup>

In terms of applying retroactively, SB 2 states that beginning January 1, 2023, agencies must report acts of serious misconduct which occurred between January 1, 2020, and January 1, 2023.<sup>210</sup> However, the Commission has stated that some reported information may be actionable.<sup>211</sup> As such, it may initiate proceedings to revoke or suspend a peace officer's certification for conduct which occurred prior to January 1, 2022 specifically for the following: (1) serious misconduct, including dishonesty and sexual assault, or the use of deadly force resulting in death or serious bodily injury or (2) when an employing agency makes a final determination regarding an investigation after January 1, 2022.<sup>212</sup> Moreover, for actions that occurred prior to January 1, 2022 and that are part of the actionable group of offenses, there exists no statutory limitation on reporting and initiating an investigation.<sup>213</sup>

Under SB 2, any peace officer may voluntarily surrender their certification permanently.<sup>214</sup> This would ultimately have the same effect as revocation, and a surrendered certification cannot be reactivated. The reason an officer may choose to do this is to avoid having an investigation conducted in a public forum.<sup>215</sup>

By no later than January 1, 2023, each law enforcement agency is responsible for completely investigating serious misconduct allegations against their peace officers, regardless of the officer's current employment status.<sup>216</sup> Thus, even if a peace officer has retired in lieu of termination, an agency must still engage in an investigation. Any grounds for decertification will be reviewed by the Division.<sup>217</sup> The Board may also in its discretion request that the Division review an investigative file or recommend that the Commission direct the Division to investigate potential grounds for decertification of a peace

---

209. *Id.*

210. S.B. 2, 2021-2022 Leg., Reg. Sess. (Cal. 2021) (amending CAL. PENAL CODE § 13510.8 (b)).

211. *Peace Officer Certification Workshop #3, supra* note 207.

212. *Id.*

213. *See id.*

214. S.B. 2, 2021-2022 Leg., Reg. Sess. (Cal. 2021).

215. *See Peace Officer Certification Workshop #3, supra* note 207.

216. S.B. 2, 2021-2022 Leg., Reg. Sess. (Cal. 2021).

217. *Id.*

2023] *POLICE ACCOUNTABILITY BEYOND SB 2* 1387

officer.<sup>218</sup> However, these requests must be based upon a decision by a majority vote of the Board.<sup>219</sup> The Commission has the authority within its discretion to direct the Division to review an investigative file; although, the Division also has the discretion to investigate any potential grounds for revocation without the request of the Commission or Board.<sup>220</sup>

*C. Other Facets of SB 2: Administrative and Reporting Requirements for Law Enforcement Agencies*

Aside from enacting decertification procedures, SB 2 also amends existing law in other aspects of peace officer oversight. For one, this bill requires the Department of Justice to provide the Commission with information regarding disqualifying felony and misdemeanor data for persons who are current and former peace officers.<sup>221</sup> SB 2 makes all records related to the revocation of a peace officer's certification public and requires that these records be retained for thirty years pursuant to the California Public Records Act.<sup>222</sup> This would include documentation of the person's appointment, promotion, and demotion dates, as well as certification or licensing status and the reason for the person leaving service as a peace officer.<sup>223</sup>

Beginning on January 1, 2023, all agencies that employ peace officers will be required to submit reports to POST upon the occurrence of any of the following:

- The agency employs, appoints, terminates, or separates from employment any peace officer, including involuntary terminations, resignations, and retirements.
- A complaint, charge, or allegation of conduct is made against a peace officer employed by the agency that could result in decertification.
- A civilian oversight entity or review board, civilian police commission, police chief, or civilian inspector general makes a finding or recommendation that a

---

218. *Id.*

219. *Id.*

220. *Id.*

221. *Id.*

222. *Id.*; CAL. GOV. CODE § 1029 (2023).

223. CAL. GOV. CODE § 1029 (2023).

peace officer employed by the agency engaged in conduct that could result in decertification.

- The final disposition of an investigation determines that a peace officer engaged in conduct that could result in decertification, regardless of the discipline imposed (if any).
- A civil judgment or court finding is made against a peace officer based on conduct that could result in decertification, or a settlement is reached in civil case against a peace officer or the employing agency based on allegations of officer conduct that could result in decertification.<sup>224</sup>

The agency will have ten days to meet the relevant reporting requirements.<sup>225</sup>

Beginning January 1, 2023, all law enforcement agencies are required to complete any investigation into allegations of “serious misconduct” (conduct that could subject a peace officer to decertification) regardless of the employment status of the officer. Should an officer resign, retire, be released from probationary employment, be terminated on unrelated grounds, or separate from employment for any other reason so that no disciplinary action could take place, the agency is still required to complete the investigation. Any time an agency has reported to the Commission a complaint, charge, or allegation of serious misconduct, the agency must retain the investigative record in its entirety for at least two years after making the report. The agency must make these records available for inspection by the Commission upon request.<sup>226</sup>

Any time an agency employs or appoints a peace officer who has previously worked as a peace officer for another agency, the hiring agency is required to contact the Commission to inquire as to the facts and reasons the officer was separated from any previous employing agency. The Commission is then required to respond with any relevant information in its possession.<sup>227</sup> The bill also amends Penal Code

---

224. Training Bulletin from Bernard Melekian, *supra* note 135, at 3.

225. *Id.*

226. *Id.*

227. *Id.*

section 832.7 (the *Pitchess* statute) to allow disclosure to the Commission of otherwise confidential peace officer personnel records.<sup>228</sup>

Lastly, SB 2 removes immunity in civil rights cases. Under current law, the Tom Bane Civil Rights Act of 1987, Civil Code section 52.1, allows individuals to bring civil claims for damages if their constitutional rights were interfered with.<sup>229</sup> However, it also contains a number of provisions that provide public employees and government agencies with immunity from liability in civil cases.<sup>230</sup> Historically, California claims for malicious prosecution against officers were entirely barred by the immunity of Government Code section 821.6.<sup>231</sup> SB 2 added a provision to the Bane Act that would eliminate certain immunity provisions, specifically providing that immunity no longer applies to claims brought against any peace officer or custodial officer, or directly against a public entity that employs them.<sup>232</sup> Thus, SB 2 states that the following immunity provisions would no longer apply to civil actions brought under the Bane Act against peace officers or directly against the public agency that employs them: Government Code section 821.6, which provides immunity to a public employee “for injury caused by his instituting or prosecuting any judicial or administrative proceeding within the scope of his employment, even if he acts maliciously and without probable cause”; Government Code section 844.6, which provides limited immunity to public entities for injuries to, or caused by, a prisoner (subject to a variety of existing exceptions); and Government Code section 845.6, which provides limited immunity to public entities and public employees for injuries caused by a public employee’s failure to obtain medical care for a

---

228. *Id.*

229. Tom Bane Civil Rights Act, CAL. CIV. CODE § 52.1. The Bane Act is California’s state counterpart to the federal Civil Rights Act, 42 U.S.C. 1983. The Bane Act provides a private right of action for damages against any person who “interferes” or “attempts to interfere by threat, intimidation, or coercion” with the exercise or enjoyment of a constitutional or other right under California or federal law. CAL. CIV. CODE § 52.1(b)–(c) (2023). Public entities are vicariously liable for Bane Act violations. *See* CAL. GOV. CODE § 815.2 (2023). The California Supreme Court held that the Bane Act simply requires “an attempted or completed act of interference with a legal right, accompanied by a form of coercion” for plaintiffs to assert a claim. *Jones v. Kmart Corp.*, 17 Cal. 4th 329, 334 (1998).

230. Training Bulletin from Bernard Melekian, *supra* note 135.

231. *See Gillan v. City of San Marino*, 55 Cal. Rptr. 3d 158, 170 (Ct. App. 2007) (“A public employee acting within the scope of employment is immune from liability for an injury caused by the employee’s ‘instituting or prosecuting any judicial or administrative proceeding . . . even if he acts maliciously and without probable cause.’” (quoting CAL. GOV. CODE § 821.6)).

232. CAL. CIV. CODE § 52.1(n) (2023).

prisoner in their custody.<sup>233</sup> Under the amended Bane Act, citizens will be able to bring claims under California law against police and other custodial officers for malicious prosecution and for injuries to prisoners.<sup>234</sup>

#### IV. WHERE DID SB 2 FALL SHORT AND HOW CAN IT BE IMPROVED?

Professor Roger Goldman, a leading scholar in the field of decertification, has laid out certain recommendations for making the decertification system effective.<sup>235</sup> Three of his main recommendations are that: (1) decertification should occur not only when a peace officer is convicted of a felony, but also in instances of “gross misconduct”;<sup>236</sup> (2) it should be possible for a referral for decertification to be made to a state’s POST commission by someone other than the police chief in the jurisdiction;<sup>237</sup> and (3) whether to decertify an officer should be a decision made by an independent fact-finding entity.<sup>238</sup> California has been successful in enacting a bill that follows Professor Goldman’s suggested regime, but it may still need some improvement.

##### A. Shortcomings of SB 2

One major critique that SB 2 received is the potential for inconsistency with California’s peace officer due process protections, which are some of the most comprehensive in the nation.<sup>239</sup> Specifically, the Public Safety Officers Procedural Bill of Rights (POBOR) extends due process protections to peace officers beyond what is provided to any other state and local public sector employee.<sup>240</sup> The provisions of

233. See S.B. 2, 2021-2022 Leg., Reg. Sess. (Cal. 2021); Training Bulletin from Bernard Melekian, *supra* note 135.

234. Training Bulletin from Bernard Melekian, *supra* note 135.

235. Roger L. Goldman, *A Model Decertification Law*, 32 ST. LOUIS U. PUB. L. REV. 147, 150–55 (2012).

236. *Id.* at 150–51.

237. Barry Scheck, *The Integrity of Our Convictions: Holding Stakeholders Accountable in an Era of Criminal Justice Reform*, 48 GEO. L.J. ANN. REV. CRIM. PROC. iii, xxiv–xxv (2019).

238. *Id.* at xxv.

239. Compare CAL. GOV. CODE §§ 3300–3313 (2023), with S.B. 16, 2021-2022 Leg., Reg. Sess. (Cal. 2021) (expanding the categories of records subject to disclosure under CAL. PENAL CODE 832.5–7 (the “Pitchess statute”)).

240. *Hearing on S.B. 2 Before the Assemb. Comm. on Appropriations*, 2021-2022 Leg., Reg. Sess. 4 (Cal. 2021). POBOR “provides a catalog of basic rights and protections that must be afforded all peace officers by the public entities which employ them.” Cal. Corr. Peace Officers Ass’n v. State, 98 Cal. Rptr. 2d 302, 308 (Ct. App. 2000). Codified at Government Code section 3303, POBOR grants officers rights in the context of investigations or interrogations that could potentially lead to “punitive action”—meaning “any action that may lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment.” CAL. GOV. CODE.

SB 2 do not address the existing statutory protections for peace officers and may potentially contradict those protections. For example, POBOR creates potential for structural impediment to SB 2's reforms through provisions such as the right to administratively appeal "punitive actions" and the application of a one-year statute of limitations period for the agency to investigate disciplinary matters.<sup>241</sup> POBOR's protections thereby limit the Commission's ability to discipline and evaluate its officers. Moreover, POBOR significantly narrows the scope of police reform measures, such as SB 2—especially those concerning oversight, performance evaluation, and discipline. As with any new law, the Commission will need to grapple with the statutory language of SB 2 and POBOR, absent further guidance from the courts.

Another critique, according to the Peace Officer's Research Association of California, is that a nine-person panel, consisting of seven members of the public with no requirements for expertise or prior experience in the practice of law enforcement, oversees the revocation process.<sup>242</sup> Analogously, they claim that if a doctor's actions were reviewed for potential discipline, it would not be sensible to have a person without any medical experience decide whether the doctor's actions were reasonable.<sup>243</sup> Unlike the Division created by SB 2, there exists no other professional licensing or certificate board made up of a majority of non-professionals.<sup>244</sup> The reason for such practice is that board members with such authority will need some type of requisite experience and training to understand the profession and make well-informed decisions regarding the reasonableness of a professional's actions in a given circumstance. Here, however, the Division will have complete investigatory authority to overturn the local agency and

---

§ 3303 (2023). Protections under Government Code section 3303 include: the right to have an interrogation occur at a reasonable hour when an officer is on duty, unless the seriousness of the investigation requires otherwise under Government Code section 3303(a); the right to not be interrogated by more than two individuals at one time under Government Code section 3303(b); the right to be informed of the nature of the investigation prior to being interrogated; the right to obtain any materials (e.g., written reports or recordings) from an initial interrogation prior to any subsequent interrogations under Government Code 3303(g); and the right to have a representative present at all times during an interrogation where the interrogation is likely to result in punitive action under Government Code section 3303(i). CAL. GOV. CODE § 3303.

241. See CAL. GOV. CODE § 3304(b), (d)(1) (2023).

242. *Hearing on S.B. 2 Before the Assemb. Comm. on Pub. Safety*, *supra* note 142, at 27.

243. *Id.*

244. In other words, "[t]he Medical Board is made up of a majority of doctors, the Dental Board is made up of a majority of dentists, and the State Bar is made up of a majority of lawyers." *Id.*

District Attorney's recommendations and disciplinary decisions.<sup>245</sup> Although it is essential to have non-professionals on the Board to introduce outside perspectives and build additional trust in the criminal justice system, giving the authority contemplated in SB 2 to the Board where almost the entirety of its members are civilians seems problematic.<sup>246</sup>

Also, the Board's role is to direct investigations and ultimately make recommendations to the full Commission for decertification.<sup>247</sup> On its face, this seems to be an advisory role, with the ultimate decision-making authority left up to the Commission.<sup>248</sup> However, the bill states that the Commission "*shall* adopt the board's recommendation unless it is without a reasonable basis."<sup>249</sup> Creating a presumption in favor of the Board's recommendation essentially ensures that the Commission must follow the recommendation of the Board.<sup>250</sup>

Another concern is the subjective classifications listed in the bill to identify what type of "serious misconduct" would trigger a lifetime decertification.<sup>251</sup> For example, besides actions that are unlawful, the bill states that serious misconduct may constitute acts that "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."<sup>252</sup> From one perspective, leaving such broad discretion to the Commission leaves ample room to address misconduct that may not be contemplated by the legislature. However, it may lead to an abuse of discretion and the potential for unnecessary investigations based on subjective implications. Furthermore, the bill only requires that the peace officer "engaged" in serious misconduct—not that they were found guilty, terminated, or even disciplined for such misconduct. Again, this high level of discretion is potentially problematic in a situation where an otherwise innocent peace officer may be personally targeted by a member of the Commission with no sufficient, objective reason for termination.

What about the police activity that may be wrong, but does not necessarily rise to a level that results in termination? The ideal system

---

245. *Id.*

246. *Id.* at 28.

247. *Id.* at 27.

248. *Id.*

249. *Id.* (emphasis added).

250. *Id.*

251. *Id.* at 28.

252. S.B. 2, 2021-2022 Leg., Reg. Sess. (Cal. 2021).

should also pay special attention to an officer's demonstrated instances of racial profiling, implicit bias, and selective enforcement of laws on the basis of one's race, religion, sexual and gender identity, and mental capacity and illness.<sup>253</sup> Corruption, though still a crime, can be much less visible to the public than those crimes or actions listed in the definition of serious misconduct.<sup>254</sup> The bill fails to address any efforts to investigate bias other than when it is reported by officers or the employing agency.

Additionally, SB 2 requires each law enforcement agency to submit to the Commission "any complaint, charge, or allegation of conduct against a peace officer employed by that agency that could render a peace officer subject to revocation of certification by the commission."<sup>255</sup> This includes virtually any misconduct, even if it does not rise to the level of SB 2 concerns. The already-existing administrative burden of addressing these instances of misconduct is exacerbated when considering that SB 2 is retroactive. In terms of the fiscal burden of administering this legislation, it is very likely that it will cause significant strains on public funding. For example, the Commission received \$650,000 in the 2021–2022 fiscal year, and according to the Assembly Appropriations Committee, will receive "between \$28 million to \$37 million . . . annually" for costs related to additional staffing and "infrastructure to create and operate the Division and the nine-member Board."<sup>256</sup> The Commission also estimates needing to hire hundreds of new staff members and acquire new locations to conduct the investigations of law enforcement misconduct, which will result in increased personnel and equipment costs, especially given that peace officers are entitled to specific benefits.<sup>257</sup> This funding is specifically to support the decertification procedures and discounts the additional funding required for other implementations of the bill.

### *B. Solutions*

First, the law should implement more incentives for agencies to report misconduct, such as granting qualified immunity to

---

253. Doherty, *supra* note 77, at 1267.

254. *Id.* at 1270.

255. S.B. 2, 2021-2022 Leg., Reg. Sess. (Cal. 2021).

256. *Hearing on S.B. 2 Before the Assemb. Comm. on Appropriations*, *supra* note 240, at 3.

257. *Id.*



departments to eliminate the potential for a defamation suit by an officer.<sup>258</sup> Additionally, the law should be amended to provide the Board with power to “enforce compliance by seeking injunctive relief or imposing civil fines.”<sup>259</sup>

The Commission should also strive to enforce some qualification requirements for members of the Board to prevent the potential for distrust that may exist in the current decertification process. Most POST agencies in other states consist heavily of law enforcement leaders.<sup>260</sup> California is unique in that seven out of nine members of the Board do not have law enforcement backgrounds. This is an effective solution in preventing conflicts of interest that may arise in law enforcement-heavy boards. Perhaps, a potential resolution is to increase the number of people who serve on the Board from nine, to thirteen.<sup>261</sup> In doing so, the Governor should appoint *two* peace officers or former peace officers with substantial experience at a command rank and *two* peace officers or former peace officers with substantial experience at a management rank in internal investigations or disciplinary proceedings of peace officers. This way, the substantial majority of the members of the Board are still members with no law-enforcement background. However, representation of law enforcement personnel would still be increased within the Board, which would give more room for the perspectives of law enforcement. Additionally, the governor should appoint *two* members who are attorneys with professional experience involving oversight of peace officers.

258. Matthew Hanner, *License & Registration: Addressing New York's Police Misconduct*, 55 COLUM. J.L. & SOC. PROBS. 57, 86 (2022). Most states grant qualified immunity to the chief of an agency for good faith reporting to the POST commission of misconduct. *See, e.g.*, ARIZ. REV. STAT. ANN. § 41-1828.01(C) (2012) (providing that “[c]ivil liability may not be imposed on either a law enforcement agency or the board for providing information specified in subsections A and B of this section if there exists a good faith belief that the information is accurate.”); *see also* Goldman, *supra* note 235, at 154.

259. Hanner, *supra* note 258, at 86. Florida law provides the power to enforce provisions, and Florida is one of the most active states in decertifying officers within the nation. FLA. STAT. ANN. § 943.12(14) (West 2005).

260. *See, e.g.*, N.Y. EXEC. LAW § 839(1) (McKinney 2021) (designating seven of the ten council positions to law enforcement representatives); ARIZ. REV. STAT. ANN. § 41-1821 (2022) (designating eight of the thirteen board positions to law enforcement representatives); FLA. STAT. ANN. § 943.11(1)(a) (West 2005) (designating eighteen of the nineteen commission positions to law enforcement representatives); IDAHO CODE ANN. § 19-5102 (West 2023) (designating twelve of the thirteen council positions to law enforcement representatives); MO. CODE ANN. § 590.120(1) (West 2007) (designating ten of the eleven commission positions to law enforcement representatives).

261. The board should be composed of an odd number of individuals to avoid gridlock on contentious issues. Hanner, *supra* note 258, at 83–84.

It is arduous to propose a solution while a major aspect of the law is still missing: the definition of “serious misconduct,” which is to be created by the Commission under SB 2’s required procedures. However, one suggestion in creating this definition would be to follow Professor Goldman’s hybrid approach.<sup>262</sup> That is, to combine a definition that entails revocation for misconduct using specific language (i.e., the approach set forth by SB 2), while also leaving room for other types of misconduct not contemplated by the act.<sup>263</sup> To do so, the law should have some further catch-all provision. Potentially, the law could expand on the definition of acts that are “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.” Furthermore, the law should implement regular review of the standard of “serious misconduct” it creates.

Lastly, it may be worth considering a federal decertification law. Although a majority of the states have some sort of decertification law, they are not uniform in standards. Officer mobility from state to state adds another layer of complexity. Being decertified in one state does not necessarily make a peace officer automatically ineligible to obtain certification in another state.<sup>264</sup> For example, some states only consider felony conviction as grounds for decertification; in others, such as California, commission of specific misconduct could trigger decertification depending on that particular state’s standards. To further strengthen accountability on a national basis, Congress should enact legislation that “requires the Department of Justice to promulgate minimum standards for police officers” and to enforce those standards through a decertification procedure.<sup>265</sup> Secondly, licensing statutes within each state “should mandate reporting to a national database regarding police licensure, suspensions, and revocations” to prevent decertified officers from moving across state lines to regain employment.<sup>266</sup> Lastly, at the very least, there should exist better coordination

---

262. Goldman, *supra* note 235, at 152.

263. *Id.* at 152–53.

264. Roger L. Goldman, *NDI: Tracking Interstate Movement of Decertified Police Officers*, POLICE CHIEF MAG. (Sept. 12, 2018), <https://www.policchiefmagazine.org/ndi-tracking-decertified-police-officers/> [<https://perma.cc/MZ5V-D3KQ>]; Grunwald & Rappaport, *supra* note 124, at 1696.

265. Doherty, *supra* note 77, at 1265.

266. Hanner, *supra* note 258, at 94. Currently, the National Decertification Index, hosted by the International Association of Directors of Law Enforcement Standards and Training, is the most well-known database of law enforcement certification information in the country. *See About NDI*, INT’L ASS’N OF DIRS. OF L. ENF’T STANDARDS & TRAINING, <https://www.iadlest.org/our-ser>

1396            *LOYOLA OF LOS ANGELES LAW REVIEW*    [Vol. 56:1355]

among states in creating decertification laws and tracking their effectiveness.

#### CONCLUSION

There is clearly a need for a strong decertification law that removes the ability of unfit officers to continue their employment in law enforcement agencies. Law enforcement officers in California should be treated just as other professionals, especially because they are entrusted with a wide range of authority and discretion—including use of force—to protect the public. “Yet, existing solutions are inadequate. Misbehaving officers often avoid responsibility, and remain employed . . . . A new solution is needed to hold police officers to a standard commensurate to the critical role they serve,” and SB 2 is a necessary first step in providing such a solution.<sup>267</sup> Though SB 2 implements significant measures to address police misconduct in California, there is more work to be done.

---

vices/ndi/about-ndi [https://perma.cc/UK6G-56YG]. Reporting to this database is voluntary. Thus, “absent a federal mandate, local departments in other states may continue to hire decertified officers to preserve their resources.” Hanner, *supra* note 258, at 94.

267. Hanner, *supra* note 258, at 99; see Rachel Moran, *Ending the Internal Affairs Farce*, 64 BUFF. L. REV. 837, 844 (2016).