

A “Protective Sweep” on Law Enforcement Employment: Legislative Changes to Peace Officer Minimum Qualification Standards

Matthew Carlson

INTRODUCTION

Peace officer fitness for duty continues to be a relevant discussion for California and the United States. In April 2021, a jury convicted Minneapolis police officer Derek Chauvin of second and third-degree murder and second-degree manslaughter in the death of George Floyd, whose death sparked a national movement of demonstrations and a call to eliminate police misconduct and brutality.ⁱ National publicity of peace officer use of force has placed pressure on independent organizations to highlight racial disparities and biases among law enforcement acting in the course of their duties. Organizations such as the California Attorneys for Criminal Justice and the California Public Defenders Association, have also pressured the legislature to eliminate “any real and/or perceived perception of biased policing.”ⁱⁱ In an attempt to screen police candidates and prevent unfit candidates from service, Assemblymembers Jacqui Irwin and Luz Rivas co-sponsored California Assembly Bill 2229, which reenacts the bias requirement training in Government Code Section 1031 related to peace officer minimum standards.ⁱⁱⁱ The following article provides a background to essential peace officer minimum standards, the history of targeted racial bias reform, failed attempts at overhauling minimum standards, and an overhaul of bias evaluation requirements.

I. CALIFORNIA GOVERNMENT CODE SECTION 1031

Traditionally, California Government Code Section 1031 provided the minimum standards for all peace officer employment. Such standards include citizenship, age, good moral character, high school diploma, and absence of physical, emotional, or mental conditions that might adversely affect a peace officer’s exercise of powers.^{iv} A peace officer must maintain these

minimum standards, which are incorporated by law into every officer's job description, throughout their career.^v As such, municipalities can take employment action against peace officers for failing to meet these standards. For example, in *Sager v. Cty. of Yuba*, the Court of Appeal, Third Appellate District of California found that an agency should not have to wait *until* harm occurs before forcing a peace officer with a history of emotional problems due to a mental disability under section 1031 to retire.^{vi}

California Assembly Bill 2229 is not the only amendment to California Government Code Section 1031. In 2021 and 2022, the legislature passed two other bills modifying peace officer employment. For instance, California Assembly Bill 89, also known as the Peace Officers Education and Age Conditions for Employment Act or PEACE Act, required the office of the Chancellor of the California Community Colleges (CCCC) to develop a modern policing degree program.^{vii} The bill required the Chancellor to reform employment standards by requiring candidates to be older and obtain more education as a way to decrease excessive use of force and to ensure officers are capable of high-level decision-making in stressful situations.^{viii} By June 1, 2023, the CCCC will submit a report on recommendations to the Legislature outlining a plan to implement this program, which will include courses pertinent to law enforcement, an allowance for prior applicable work or educational experience, a modern policing degree program and bachelor's degree program, and financial assistance for students of historically underserved and disadvantaged communities.^{ix} The bill also increased the minimum qualifying age from 18 to 21 years of age for specified peace officers, based on the scientific evidence on young adult development and neuroscience that shows certain areas of the brain, particularly those affecting judgment and decision-making, do not develop until the early to mid-20s.^x

Second, California Senate Bill 960 proposed citizenship changes to California Government Code Section 1031. Existing law required peace officers to either be a citizen of the United States or permanent resident who is eligible for and has applied for citizenship.^{xi} Senate Bill 960 removed the citizen requirement and now requires peace officers to be legally authorized to work in the United States.^{xii} The bill also expanded the minimum education requirement accreditation standards to include an organization holding a full membership in Cognia.^{xiii} Cognia is a non-profit organization that accredits primary and secondary schools in the United States.^{xiv} Lastly, the bill removed the Department of the California Highway Patrol's prohibition of applicants who are non-U.S. citizens.^{xv}

II. RACIAL AND IDENTITY PROFILING ACT OF 2015

Efforts to combat law enforcement bias and racial profiling are not new. California Assembly Bill 2229 stemmed in part from findings collected by the Racial and Identity Profiling Act (RIPA). California Assembly Bill 953 originally proposed RIPA, which revised the definition of "racial profiling" to instead refer to "racial or identity profiling," and made a conforming change to prohibit peace officers from engaging in profiling behavior.^{xvi} Passed by the legislature in 2015, RIPA added Section 12525.5 to the Government Code, which required all law enforcement in California to collect officer-perceived demographic and other detailed data for all pedestrian and traffic stops by 2023.^{xvii} RIPA also required the Attorney General to establish a Racial and Identity Profiling Advisory Board to eliminate racial and identity profiling and improve diversity and racial and identity sensitivity in law enforcement.^{xviii} These duties were codified into California Penal Code Section 13519.4.^{xix} Additionally, the Act added a basic training course for peace officers on racial, identity, and cultural diversity in order to foster

mutual respect and cooperation between law enforcement and members of racial, identity, and cultural groups.^{xx}

Despite implementation, California courts have been hesitant to find a violation of RIPA in cases of law enforcement conduct, instead focusing on the issue of probable cause. In *People v. Durazo*, an officer stopped the defendant's vehicle after observing that defendant and his passenger, both young Hispanic males, appeared to be looking in the direction of a large apartment complex, the same location where a college student reported to police that two individuals who claimed to be Mexican gang members threatened to attack him.^{xxi} As the officer conducted the traffic stop on a mere hunch (“gut feeling”) that the defendant was involved in criminal activity, the court found the facts known to the officer were insufficient to support the objectively reasonable suspicion necessary to justify detention under the Fourth Amendment.^{xxii} The officer observed that both the defendant and passenger were Hispanic, and the court noted that the “reliance on that immutable characteristic, without more, would amount to impermissible racial profiling” under Cal. Penal Code § 13519.4(d), (e).^{xxiii} Instead, the court focused on the officer’s insufficiency to create reasonable suspicion by using his “gut feeling,” based on the totality of circumstances. The court held the defendant’s mere act of looking in the direction of a large apartment building four days after the reported threat does not give rise to objectively reasonable suspicion.^{xxiv} *See also People v. Lomax*, 49 Cal. 4th 530, 565 (2010) (distinguishing a defendant’s claim of racial profiling from the ability of police to rely on a criminal suspect’s description to determine whether there is probable cause).

Peace officer unions have pushed back on the implementation of RIPA at the city level. In *Claremont Police Officers Ass’n v. City of Claremont*, the employee organization Claremont Police Officers Association, which represents police officers, recruits, record clerks, and other

city enforcement officers argued a vehicle-stop data collection study violated the City's requirements to meet and confer under the *Meyers-Milias-Brown Act*. The study required officers to complete a form on all vehicle stops that included questions regarding the "driver's perceived race/ethnicity," and the "officers' prior knowledge of driver's race/ethnicity."^{xxv} The California Supreme Court emphasized the Legislature has made clear racial profiling "presents a great danger to the fundamental principles of a democratic society...[and] is abhorrent and cannot be tolerated."^{xxvi} The court noted that the City's efforts to implement the study were to improve relations between the police and the community and concluded its implementation did not have a significant and adverse effect on the officers' working conditions; however, it narrowed its holding to exclude the issues of officer discipline and privacy rights.^{xxvii} Solely regarding the effects of working conditions, the court found the form only took officers about two minutes to complete and the impact on their working conditions was de minimis.^{xxviii}

The authors of Assembly Bill 953 sought to improve the relationship between law enforcement and their communities by eliminating racial and identity profiling.^{xxix} The goal was to provide reform in all aspects of law enforcement employment duties where profiling was prevalent, such as "personnel stop[s], search[es], [seizures of property], [and interrogating] a person without evidence of criminal activity."^{xxx} The hope was to establish a uniform system for collecting data on law enforcement-community interactions, and then analyze for profiling patterns to provide recommendations on how to reform employment standards. RIPA helped lay the groundwork for enacting the bias evaluations in peace officer applicant screenings.

III. CALIFORNIA ASSEMBLY BILL 2429

Not all actions on peace officer employment pass the legislative committee. Currently, the Commission on Peace Officer Standards and Training is responsible for developing and

implementing programs to increase the effectiveness of law enforcement, which includes “adopt[ing] rules establishing minimum standards relating to physical, mental, and moral fitness governing the recruitment of specified peace officers.”^{xxxix} California Assembly Bill 2429 would require the Commission to assess existing training requirements for officers in the field and report its findings to the Legislature by January 1, 2025.^{xxxix} The bill would also establish an academic review board to regularly review and update the Commission’s training standards and curriculum. As of August 11, 2022, Assembly Bill 2429’s legislative status is “[i]n committee: is held under submission.”^{xxxix} When a bill is “held under submission,” it is heard in committee and there is an indication that the author and the committee members want to work on or discuss the bill further, but there is no motion for the bill to progress out of committee.^{xxxix} The bill could be set for another hearing in the future.

IV. CALIFORNIA ASSEMBLY BILLS 846 and 2229

Currently, peace officer employment minimum standards require an evaluation by a physician and surgeon or psychologist, and the peace officer candidate must be found free of any physical, emotional, or mental condition that might adversely affect the exercise of the candidate’s powers.^{xxxv} California Government Section 1031 originally contained a provision for these evaluations to screen for bias towards protected groups, but it was unintentionally removed. Now, Assembly Bill 2229 intends to add bias evaluations back into the code.

These bias evaluations were originally developed in 2019’s Assembly Bill 846 but were unintentionally eliminated when Governor Newsom passed Assembly Bill 1096 in 2020. Assembly Bill 846 required evaluations of peace officers by a physician and surgeon, or psychologist, to include bias against “race or ethnicity, gender, nationality, religion, disability, or sexual orientation.”^{xxxvi} Assembly Bill 846 also took a radical step towards peace officer

employment reform by requiring departments and agencies to review and make changes to job descriptions used in the recruitment and hiring process.^{xxxvii} These changes would need to “deemphasize the paramilitary aspects of the job and place more emphasis on community interaction and collaborative problem solving.”^{xxxviii}

Assembly Bill 846 also targeted police use of implicit and explicit biases towards protected groups. While California Penal Code Section 13519.4 (f) prohibits peace officers from engaging in racial or identity profiling, the authors of Assembly Bill 846 noted the Peace Officer Standards and Training courses have not resulted in less racial profiling.^{xxxix} Citing the 2019 RIPA report, the authors commented on findings revealing several trainings conducted in 2018 did not meet all of the curriculum requirements.^{xl} This justified the need to radically reform peace officer employment criteria, along with RIPA’s findings showing 741 civilians were involved in the use of force incidents (comprising 43.9% of Latino civilians and Black civilians comprising 19.3%) in 2017.^{xli} The legislature sought to reform employment criteria by changing public perception of law enforcement. The goal of Assembly Bill 846 shifted militaristic-centered job recruiting to advertising for candidates focused on community interaction and problem-solving.^{xlii} This would, in theory, screen out officers who regularly engage in use of force, and instead promote the use of de-escalation techniques.

California Assembly Bill 2229 amends Section 1031 of the Government Code to add back the requirement that employment evaluations include bias screening against race or ethnicity, gender, nationality, religion, disability, or sexual orientation.^{xliii} According to the author of the bill, Assembly Bill 2229 “is a clean-up bill that seeks to reenact the bias requirement training in Gov. Code Section 1031, which [Assembly Bill] 1096 unintentionally eliminated.”^{xliv} Similar to Assembly Bill 846, this bill would also require officers to undergo an

evaluation to determine if any explicit or implicit biases could impact their ability to effectively and neutrally act in the role of a peace officer.^{xlv} The evaluation would also determine how officers “handle the extraordinary responsibility that goes along with that highly-trusted role.”^{xlvi} Next, Assembly Bill 2229 would include changes to citizenship status if Assembly Bill 2229 and Senate Bill 960 are both enacted, with Assembly Bill 2229 being enacted last. Lastly, the bill would take effect as an urgency statute.^{xlvii} Governor Newsom approved Assembly Bill 2229 on September 30, 2022.^{xlviii}

CONCLUSION

Changes to the political landscape have sparked changes in how the legislature views peace officer eligibility requirements. Sweeping acts of reform have targeted law enforcement racial profiling by analyzing traffic stops for how an officer’s prior knowledge of a driver’s race/ethnicity can affect the nature of their action taken. While courts frequently rule on peace officers’ inappropriate uses of procedure, courts infrequently hold that peace officers engage in racial profiling. The legislature has acted to address racial profiling by reforming peace officer employment standards. By including bias against race or ethnicity, gender, nationality, religion, disability, or sexual orientation in employment evaluation screenings, Assembly Bill 2229 seeks to eliminate any perception of biased policing and recruit and screen for members who can carry out their duties in a manner free from violating a person’s constitutional rights.^{xlix} Law enforcement with implicit and explicit bias can be dangerous due to their position of power over demographic groups.^l However, evaluations for bias during employment screening can mitigate its influence.^{li} This can in turn save the lives of those who have interactions with law enforcement. One of the backers of Assembly Bill 2229, the California Public Defenders Association, stressed that candidate screening is an important tool for law enforcement agencies

to prevent unfit candidates from entering the police force. These transparent efforts can foster the trust of police within the community and promote “legitimate law enforcement efforts by other officers;” this supports the idea of fairness and impartiality in our justice system.^{lii}

ⁱ Matthew Brown and Katie Wadington, *Exclusive: Americans overwhelmingly approve of Chauvin guilty verdict, USA TODAY/Ipsos snap poll finds*, USA Today (April 21, 2021), <https://www.usatoday.com/story/news/politics/2021/04/21/chauvin-verdict-poll-majority-approve-guilty-finding/7316788002/>.

ⁱⁱ 2021 Legis. Bill Hist. CA A.B. 2229

ⁱⁱⁱ *Id.*

^{iv} Cal Gov Code § 1031.

^v *Sager v. Cty. of Yuba*, 156 Cal. App. 4th 1049, 1059 (2007).

^{vi} *Id.* at 1061.

^{vii} Peace Officers Education and Age Conditions for Employment Act or PEACE Act., 2021 Bill Text CA A.B. 89

^{viii} 2021 Legis. Bill Hist. CA A.B. 89.

^{ix} 2021 Bill Text CA A.B. 89.

^x *Id.*

^{xi} 2021 Bill Text CA S.B. 960.

^{xii} *Id.*

^{xiii} *Id.*

^{xiv} *Our History*, Cognia (Last visited 9/17/2022), <https://www.cognia.org/the-cognia-difference/history/>.

^{xv} 2021 Bill Text CA S.B. 960.

^{xvi} 2015 Cal AB 953.

^{xvii} Magnus Lofstrom, Joseph Hayes, Brandon Martin, and Deepak Premkumar, *Racial Disparities in Law Enforcement Stops*, Public Policy Institute of California (2022), <https://www.ppic.org/publication/racial-disparities-in-law-enforcement-stops/>.

^{xviii} 2015 Cal AB 953.

^{xix} *Id.*

^{xx} Cal. Penal Code § 13519.4.

^{xxi} *People v. Durazo*, 124 Cal. App. 4th 728, 731 (2004).

^{xxii} *Id.*

^{xxiii} *Id.* at 735.

^{xxiv} *Id.* at 736, 737.

^{xxv} *Claremont Police Officers Ass’n v. City of Claremont*, 39 Cal. 4th 623, 629 (2006).

^{xxvi} *Id.* at 632.

^{xxvii} *Id.* at 638 and 639.

^{xxviii} *Id.* at 638.

^{xxix} 2015 Legis. Bill Hist. CA A.B. 953.

^{xxx} *Id.*

^{xxxi} 2021 Bill Text CA A.B. 2429.

^{xxxii} *Id.*

^{xxxiii} *AB-2429 Commission on Peace Officers Standards and Training: assessment of training requirement*, California Legislative Information (Last visited 9/17/2022),

https://leginfo.legislature.ca.gov/faces/billHistoryClient.xhtml?bill_id=202120220AB2429.

^{xxxiv} *Overview of California Legislative Process*, A County Supervisor’s Resource Guide,

https://www.counties.org/sites/main/files/file-attachments/v2-tab5_-_legislative_advocacy.pdf.

^{xxxv} 2021 Bill Text CA A.B. 2229.

^{xxxvi} 2019 Bill Tracking CA A.B. 846.

^{xxxvii} *Id.*

^{xxxviii} *Id.*

^{xxxix} 2019 Legis. Bill Hist. CA A.B. 846.

xl *Id.*

xli *Id.*

xlii *Id.*

xliiii 2021 Bill Text CA A.B. 2229.

xliiv 2021 Legis. Bill Hist. CA A.B. 2229.

xliv 2019 Legis. Bill Hist. CA A.B. 846.

xlvi *Id.*

xlvii *Id.*

xlviii *AB-2229 Peace officers: minimum standards: bias evaluation*, California Legislative Information (Last visited 10/14/2022), https://leginfo.legislature.ca.gov/faces/billHistoryClient.xhtml?bill_id=202120220AB2229.

xlix 2021 Legis. Bill Hist. CA A.B. 2229.

¹ *Concurrence in Senate Amendments*, Assem. Bill 846, 2019-2020 Reg. Sess. (Cal. 2020).

https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201920200AB846#.

ⁱⁱ *Id.*

ⁱⁱⁱ 2021 Legis. Bill Hist. CA A.B. 2229.