



California Commission on Peace Officer Standards and Training

GUIDE TO PEACE OFFICER DECERTIFICATION PROCEEDINGS AND OFFICER RIGHTS TO CONTEST AND APPEAL

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I. Introduction

The Commission on Peace Officer Standards and Training (POST) was established by the Legislature in 1959 to set minimum selection and training standards for California law enforcement. The POST organization, with more than 260 staff members, functions under the direction of an Executive Director appointed by the POST Commission.

On January 1, 2022, Senate Bill (SB) 2, which established a certification and decertification program for certain peace officers, took effect (Stats. 2021, c. 409 (S.B.2), § 12, eff. Jan. 1, 2022). The law provides that agencies employing such peace officers may only employ peace officers possessing current, valid certification (Cal. Penal Code § 13510.1 (g)(1)). It further establishes certain grounds for suspension or revocation of an officer's certification and sets up a process for such determining and resolving such actions against a peace officer's certification (Cal. Penal Code §§ 13510.8; 13510.85).

The Peace Officer Standards Accountability Division (POSAD) within POST is responsible for investigation of allegations that may give rise to a decertification action. If, after investigation, POSAD finds reasonable grounds for revocation or suspension of a peace officer's certification, it notifies the officer in writing of its determination and the reasons therefore, and is required to give the officer a detailed explanation of the decertification procedure and an officer's rights to contest and appeal a decertification action (Cal. Penal Code § 13510.85(a)(1)). This guide is intended to serve that purpose.

This guide does not supersede existing laws and regulations. Applicable laws and rules governing POST and the decertification process may be found on POST's website:

- www.post.ca.gov/California-Penal-Code-and-Government-Code
- www.post.ca.gov/Commission-Regulations

This guide is not intended to provide legal advice, and all legal questions should be directed to the officer's union representatives, agency legal departments, or private legal counsel, as appropriate.

II. Officers Subject to SB 2

SB 2 applies to any peace officer described in Penal Code §§ 830.1, 830.2 (with the exception of those described in subdivision (d) of that section) 830.3, 830.32, or 830.33, or any other peace officer employed by an agency that participates in the POST program (Cal. Penal Code § 13510.1(a)). A list of POST participating agencies may be found on POST's website: www.post.ca.gov/le-agencies

III. Certification Requirements

Any agency employing peace officers described in Penal Code § 13510.1 (a) shall employ as a peace officer only individuals with current, valid certification pursuant to this section, except that an agency may provisionally employ a person for up to 24 months, pending certification by the Commission (Cal. Penal Code § 13510.1(g)(1)). Commencing on January 1, 2023, any peace officer described in subdivision (a) who does not possess a basic certificate and who is not yet or will not be eligible for a basic certificate, shall apply to the Commission for proof of eligibility (Cal. Penal Code § 13510.1(h)(2)). A certificate or proof of eligibility issued pursuant to Penal Code § 13510.1 shall be considered the property of the commission (Cal. PC § 13510.1(a)) and the Commission has the authority to suspend, revoke, or cancel any certification it issues (Cal. Penal Code § 13510.1(f)).

IV. Grounds for Decertification

1. Disqualifying Convictions and Adjudications

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 (Cal. Penal Code § 13510.8(a)(1)). Government Code § 1029 provides that individuals are disqualified from service as a peace officer in the case of, among other things, certain specified criminal convictions, or adjudications, including military adjudications and offenses committed in another state that would have been disqualifying had they been committed in California, placement on the National Decertification Index, and other circumstances (Cal. Gov't Code § 1029).

Pursuant to POST Regulation, upon determination that a person is disqualified from holding office as a peace officer, the officer is notified of the determination and is given an opportunity to respond to POSAD in the event the officer believes the conviction or adjudication is not disqualifying. If POSAD determines that the individual is disqualified, the full Commission has an opportunity to review and summarily affirm the disqualification if it agrees with POSAD's determination (Title 11, Cal. Code Regs. § 1203).

2. Serious Misconduct

A peace officer may have their certification suspended or revoked if the person has been terminated for cause from employment as a peace officer for, or has, while employed as a peace officer, otherwise engaged in, any serious misconduct as described in Penal Code § 13510.8(b) (Cal. PC § 13510.8(a)(2)). The Commission has, by regulation, promulgated a definition of serious misconduct which governs these determinations (Title 11, Cal. Code Regs. § 1205). According to this regulation:

"(a) Serious Misconduct is:

(1) Dishonesty relating to the reporting, investigation, or prosecution of a crime, or relating to the reporting of, or investigation of misconduct by, a peace officer or custodial officer, including, but not limited to, false statements, intentionally filing false reports, tampering with, falsifying, destroying, or concealing evidence, perjury, and tampering with data recorded by a body-worn camera or other recording device for purposes of concealing misconduct. For purposes of this subsection, in considering whether a suspension or revocation of certification is proper, the Commission will consider the extent to which the dishonesty related to a material or significant fact in the context of the statement or omission alleged to be dishonest, and will also consider whether the dishonesty appears to have been done willfully or intentionally, with the intent to deceive.

(2) Abuse of power, including, but not limited to, intimidating witnesses, knowingly obtaining a false confession, and knowingly making a false arrest. For purposes of this subsection, in considering whether a suspension or revocation of certification is proper, the Commission will consider the extent to which the abuse of power was a knowing abuse of the power and authority of a public office.

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

(4) Sexual assault as described in subdivision (b) of Penal Code Section 832.7, and shall extend to acts committed amongst members of any law enforcement agency.

(5) Demonstrating bias on the basis of actual or perceived race, national origin, religion, gender identity or expression, housing status, sexual orientation, mental or physical disability, or other protected status in violation of law or department policy or inconsistent with a peace officer's obligation to carry out their duties in a fair and unbiased manner. This paragraph does not limit an employee's rights under the First Amendment to the United States Constitution.

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

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

(8) Failure to cooperate with an investigation into potential police misconduct, including an investigation conducted pursuant to Chapter 1 of Title 4 of Part 4 of the Penal Code. For purposes of this paragraph, the lawful exercise of rights granted under the United States Constitution, the California Constitution, or any other law shall not be considered a failure to cooperate.

(9) Failure to intercede when present and observing another officer using force that is clearly beyond that which is necessary, as determined by an objectively reasonable officer under the circumstances, taking into account the possibility that other officers may have additional information regarding the threat posed by a subject."

Serious misconduct reports are received by the Commission by a variety of means, including citizen's complaints (Cal. Penal Code § 13509.5(d)) and mandatory reporting required by police agencies (Cal. Penal Code § 13510.9). POSAD is permitted to review internal affairs/misconduct investigations conducted by agencies or other investigatory authorities (Cal. Penal Code § 13510.9(c)) and to conduct additional investigations as needed (Cal. Penal Code § 13509.5(b)). POSAD will then present findings and recommendations to the Board and Commission and bring proceedings seeking the suspension or revocation of certification of peace officers as directed by the Board and Commission pursuant to SB 2 (Cal. Penal Code § 13509.5).

V. The Revocation and Suspension of Certification Process

As discussed above, when, upon the completion of an investigation conducted pursuant to subdivision (c) of PC section 13510.8, the division finds reasonable grounds for revocation or suspension of a peace officer's certification, it "shall take the appropriate steps to promptly notify the peace officer involved, in writing, of its determination and reasons therefore, and shall provide the peace officer with a detailed explanation of the decertification procedure and the peace officer's rights to contest and appeal."

Upon receipt of notice that POSAD intends to take action against an officer's certification, the officer has several options:

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a. Option 1: Voluntary Surrender

Pursuant to Penal Code § 13510.8(f) a certified officer may, at any time, voluntarily surrender their certification, which will eliminate the need for further legal proceedings involving the revocation. As a result, the Division's case will be administratively closed without further litigation of the matter. Although a voluntary permanent surrender of certification does not include a finding nor determination by the full Commission that revocation should be imposed a result of serious misconduct occurred, the voluntary surrender does have the same effect as revocation in that the person may no longer be employed as a peace officer. A permanently surrendered certification cannot be reactivated.

Note: A voluntary permanent surrender is not the same as placement of a valid certification into inactive status during a period in which a person is not actively employed as a peace officer.

b. Option 2: Do Nothing, Resulting in the Division's Recommendation Being Imposed

Pursuant to Penal Code § 13510.85(a)(2), if upon notification, the peace officer does not file a request for review within 30 days, the peace officer's certification shall be suspended or revoked, consistent with the division's determination, without further proceedings.

c. Option 3: File a Request for Review and Begin the Hearing Process

Alternatively, the peace officer may file a request for review by the Peace Officer Standards Accountability Advisory Board and the Commission on Peace Officer Standards and Training. The request for review must be received by POST, or postmarked, within 30 calendar days of the date of mailing of the notice of intent to suspend or revoke by the division (Cal. Penal Code § 13510.85(a)(2); Title 11 Cal. Code Regs. § 1209). If the peace officer does not file a request for review within 30 days, the peace officer's certification shall be suspended or revoked, consistent with the division's determination, without further proceedings. If the peace officer files a timely review, the Board shall schedule the case for hearing (Cal. Penal Code § 13510.85(a)(2)).

Please Note: These initial hearings are not evidentiary, do not involve the presentation of evidence, and do not involve the making of any determinations as to whether serious misconduct actually occurred or what penalty against an officer's certification should be imposed. Rather, they are simply a mechanism by which the Board and Commission may make a preliminary determination as to whether, if the Division's findings are proven, the facts appear to fall within a category of serious misconduct such that the case should be referred out for a full evidentiary hearing and a later determination, following the presentation of evidence, as to whether the claimed serious misconduct actually occurred and if so, what the appropriate penalty should be.

Please Further Note: However, notwithstanding Penal Code § 832.7, the hearings of the Board and the review by the Commission under Penal Code § 13510.85(a)(4) and (5), administrative adjudications held pursuant to Penal Code § 13510.85(a)(6), and any records introduced during those proceedings, shall be public (Cal. Penal Code § 13510.85(b)).

i. Initial Review by the Board

The Board reviews the findings of investigations presented by the division and makes a recommendation on what action should be taken on the certification of the peace officer involved. The Board shall only recommend revocation if the factual basis for revocation is established by clear and convincing evidence. If the Board determines that the facts and circumstances revealed by the investigation warrant a sanction other than revocation, it may recommend that a peace officer's certification be suspended for a period of time. The Board shall issue a written decision explaining its reasons for decertification or suspension. (Cal. Penal Code § 13510.85(a)(4)).

During the hearing, beyond the division's presentation of its findings to the Board, no witness testimony or presentation of additional evidence or argument is permitted. The peace officer or the peace officer's representative, during the public comment period, may only address the issue of the sufficiency of the division's findings before the Board (Title 11, Cal. Code Regs. § 1209).

ii. The Commission's Review of the Board's Recommendation and Possible Referral for an Administrative Hearing

The Commission reviews all recommendations made by the Board. The Commission's decision to adopt a recommendation by the Board to seek revocation shall require a two-thirds vote of Commissioners present and shall be based on whether the record, in its entirety, supports the Board's conclusion that serious misconduct has been established by clear and convincing evidence. In any case in which the Commission reaches a different determination than the Board's recommendation, it shall set forth its analysis and reasons for reaching a different determination in writing (Cal. Penal Code § 13510.85(a)(5)).

As noted above, this is not an evidentiary hearing and is simply a review by the Commission of the record before the Board to determine whether the Board's conclusion was supported by the Division's findings. Any determination by the Commission to refer the matter for a full evidentiary hearing does not constitute a finding that serious misconduct actually occurred or that discipline is appropriate. The peace officer or the peace officer's representative, during the public comment period, may only address the issue of the sufficiency of the Board's determinations based upon the record before the Board (Title 11, Cal. Code Regs. § 1209).

The Commission will return any determination requiring action to be taken against an individual's certification to the Division, which shall initiate proceedings for a formal hearing before an administrative law judge (ALJ) in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), which shall be subject to judicial review as set forth in that Act (Cal. Penal Code § 13510.85(a)(6)). The process is normally initiated when the division files an Accusation or Statement of Issues with Office of Administrative Hearings (OAH).

iii. The Administrative Hearing

The administrative hearing is the officer's opportunity to defend against the allegations of serious misconduct and present evidence and/or arguments against the imposition of the sought-after discipline. The hearings are conducted before an ALJ of the OAH.

You may be but need not be, represented by counsel during this process. A detailed explanation of the administrative hearing procedure is beyond the scope of this document, but litigants are encouraged to review the Administrative Procedure Act and the OAH website for additional information about the process.

According to OAH:

ALJs preside over hearings in a manner similar to civil court trials unless local agency rules provide otherwise. Hearings are generally open to the public. Each party is given an opportunity to make an opening statement, call witnesses, and offer other relevant evidence. After all the evidence is submitted, the parties may make closing arguments, orally or in writing. In most cases, the ALJ prepares a detailed written decision within 30 days.

The proposed decision may be adopted by the Commission as its final decision in the case, or the Commission may take other action following receipt of the proposed decision, as set forth in Government Code § 11517. Thirty days after the receipt by the agency of the proposed decision, a copy of the proposed decision shall be filed by the agency as a public record and a copy shall be served by the agency on each party and his or her attorney. The filing and service is not an adoption of a proposed decision by the agency (Cal. Gov't Code § 11517(c)(1)).

d. The Commission's Consideration of the Proposed Decision

Within 100 days of receipt by the agency of the ALJ's proposed decision, the Commission may do any of the following:

- A) Adopt the proposed decision in its entirety.
- B) Reduce or otherwise mitigate the proposed penalty and adopt the balance of the proposed decision.
- C) Make technical or other minor changes in the proposed decision and adopt it as the decision. Action by the agency under this paragraph is limited to a clarifying change or a change of a similar nature that does not affect the factual or legal basis of the proposed decision.

D) Reject the proposed decision and refer the case to the same ALJ if reasonably available, otherwise to another ALJ, to take additional evidence. If the case is referred to an ALJ pursuant to this subparagraph, he or she shall prepare a revised proposed decision, as provided in paragraph (1), based upon the additional evidence and the transcript and other papers that are part of the record of the prior hearing. A copy of the revised proposed decision shall be furnished to each party and his or her attorney as prescribed in this subdivision.

E) Reject the proposed decision, and decide the case upon the record, including the transcript, or upon an agreed statement of the parties, with or without taking additional evidence. By stipulation of the parties, the Commission may decide the case upon the record without including the transcript. If the Commission acts pursuant to this subparagraph, all of the following provisions apply:

i) A copy of the record shall be made available to the parties. The agency may require payment of fees covering direct costs of making the copy.

ii) The agency itself shall not decide any case provided for in this subdivision without affording the parties the opportunity to present either oral or written argument before the agency itself. If additional oral evidence is introduced before the agency itself, no agency member may vote unless the member heard the additional oral evidence.

iii) The authority of the agency itself to decide the case under this subdivision includes authority to decide some but not all issues in the case.

iv) If the agency elects to proceed under this subparagraph, the agency shall issue its final decision no later than 100 days after rejection of the proposed decision. If the agency elects to proceed under this subparagraph and has ordered a transcript of the proceedings before the ALJ, the agency shall issue its final decision no later than 100 days after receipt of the transcript. If the agency finds that a further delay is required by special circumstance, it shall issue an order delaying the decision for no more than 30 days and specifying the reasons therefor. The order shall be subject to judicial review pursuant to Section 11523 (Cal. Gov't Code § 11517(c)(2)(A)-(E)).

In considering whether to take action against a peace officer's certification, and in considering whether a revocation or suspension is appropriate in light of the facts of the particular case, the Commission shall consider any of the following factors:

- (1) The nature and severity of the act or omission.
- (2) The circumstances surrounding the conduct and the extent to which the act or omission caused any actual or potential harm to or impact upon the victim, the public, other peace officers, the employing agency, or the law enforcement profession.
- (3) Whether the involved peace officer is currently employed as a peace officer.
- (4) Whether the alleged conduct was committed under the color of authority or while the peace officer was acting in the capacity of a peace officer.
- (5) The peace officer's prior conduct, discipline and service record, and any prior instances of misconduct.
- (6) The proximity or remoteness in time since the conduct occurred.
- (7) Any mitigating or aggravating factors and/or evidence of rehabilitation.
- (8) The degree of accountability and cooperation with the investigation evidenced by the peace officer.
- (9) The extent to which discipline, or forbearance from discipline, would impact the best interests of the public, the public service, the employing agency, and/or the law enforcement profession.
- (10) The motives of the peace officer that resulted in the conduct.
- (11) Consistency of the penalty with those imposed upon other peace officers for the same or similar offense.
- (12) The clarity with which the peace officer was on notice of any rules that were violated in committing the offense.
- (13) The extent to which the act or omission was done intentionally, willfully, or maliciously.

(14) The likelihood of recurrence.

(15) Any other aggravating or mitigating factors relevant to the Commission's determination.

(Title 11, Cal. Code Regs. § 1213)

If the Commission fails to act as prescribed in subparagraphs (A) to (E) above, inclusive, within 100 days of receipt of the proposed decision, the proposed decision shall be deemed adopted by the Commission (Cal. Gov't Code § 11517(c)(2).)

The decision of the Commission shall be filed immediately by the Commission as a public record and a copy shall be served by the Commission on each party and his or her attorney. (Cal. Gov't Code § 11517(d).)

Pursuant to Commission Regulation, the Commission's decision shall be considered final 30 days after the date of service of the decision upon the involved peace officer or their legal representative. A copy of the written decision shall be provided to:

- (A) The Board,
- (B) The Division,
- (C) The involved peace officer or designated representative, and
- (D) The head of the agency that employs or employed the involved peace officer.

(Title 11, Cal. Code Regs. § 1212 (c)(3))

The Commission shall publish the names of any peace officer whose certification is suspended or revoked and the basis for the suspension or revocation on the POST website.

(Title 11, Cal. Code Regs. § 1212 (d))

The Commission shall notify the National Decertification Index of the International Association of Directors of Law Enforcement Standards and Training of any peace officer whose certification is suspended or revoked and the basis for the suspension or revocation.

(Title 11, Cal. Code Regs. § 1212 (e))