

CALIFORNIA DEPARTMENT OF JUSTICE
TITLE 11. LAW
DIVISION 1. ATTORNEY GENERAL
CHAPTER 11. CALIFORNIA LAW ENFORCEMENT ACCOUNTABILITY REFORM
ACT

NOTICE OF PROPOSED RULEMAKING

Notice published January 24, 2025

The Department of Justice (Department) proposes to adopt sections 941-954 of Title 11, Division 1, Chapter 11, of the California Code of Regulations concerning the California Law Enforcement Accountability Reform Act, Assembly Bill 655 (2022), codified at Penal Code sections 13680-13683 (“AB 655”), which took effect on January 1, 2023, and was amended effective January 1, 2024.

PUBLIC HEARING

The Department will hold two public hearings to provide all interested persons with an opportunity to present statements or comments, either orally or in writing, with respect to the proposed regulations, as follows:

Wednesday, March 12, 2025, 3:00-5:00pm

Junipero Serra Building, Carmel Room
320 West 4th Street
Los Angeles, CA 90013

Remote participation: <https://doj-ca.zoomgov.com/j/1619080203>

Phone participation: (669) 254 5252, access code 161 908 0203

Friday, March 14, 2025, 3:00-5:00pm

Elihu M. Harris Building, Auditorium
1515 Clay Street
Oakland, CA 94612

Remote participation: <https://doj-ca.zoomgov.com/j/1616685630>

Phone participation: (669) 254 5252, access code 161 668 5630

The locations of these hearings will be wheelchair accessible. At the hearing, any person may present statements or comments orally or in writing relevant to the proposed action described in the Informative Digest. The Department requests but does not require that persons who make oral statements or comments at the hearing also submit a written copy of the comment made at the hearing.

WRITTEN COMMENT PERIOD

Any interested party, or their authorized representative, may submit written comments relevant to the proposed regulatory action to the contact persons listed below. Comments may also be

submitted by facsimile (FAX) at (213) 897-7605 or by e-mail to CLEARACT@doj.ca.gov. The written comment period closes at **5:00 p.m. on March 14, 2025**. The Department will consider only comments received by that time. Please address comments to:

Department of Justice
Civil Rights Enforcement Section
Attn: M. Newman, Senior Assistant Attorney General
P.O. Box 160608
Sacramento, CA 95816-0608
(213) 269-6766
CLEARACT@doj.ca.gov

NOTE: Written and oral comments, attachments, and associated contact information (e.g., address, phone, email, etc.) become part of the public record and can be released to the public upon request.

AUTHORITY AND REFERENCE

Authority: Section 13682, Penal Code.

Reference: Section 3304, Government Code; Sections 13510.8, 13510.9, 13680, 13682, Penal Code; Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, Penal Code; Title 15, Section 3417, California Code of Regulations.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Summary of Existing Laws and Regulations:

Effective January 1, 2023, the California Law Enforcement Accountability Reform Act, Assembly Bill 655 (2022), codified at Penal Code sections 13680-13683 (“AB 655”), identifies three categories of misconduct by peace officers that, if sustained after an investigation and adjudication of complaints regarding this misconduct, will result in their termination: membership in a hate group, participation in hate group activity, and public expressions of hate (together, “Covered Misconduct”). (Pen. Code, § 13682; see also, *id.*, § 13680, subs. (d), (e), (g).) The categories of misconduct are defined in AB 655 and are narrow in scope. For example, a “hate group” is an organization that supports, advocates for, threatens or practices genocide or the commission of “hate crimes,” a term that is defined in another California statute, Penal Code section 422.55. Likewise, a “public expression of hate” is also defined in the statute and refers to a statement made to another, including in an online forum, that explicitly advocates, threatens, or supports the commission of a hate crime or genocide or explicitly advocates for or supports a hate group.

Public agencies are required to determine whether any candidate for a peace officer position has engaged in such Covered Misconduct during the previous seven years and since 18 years of age, and to deny employment if so. (Pen. Code, § 13681, subs. (a), (b).) Likewise, if a public agency receives a complaint that one of its peace officers has engaged in Covered Misconduct, the agency must investigate, or cause to be investigated by an appropriate oversight agency, the

complaint and, where a sustained finding of misconduct is reached, must terminate the peace officer's appointment as a peace officer. (Pen. Code, § 13682, subds. (a), (b).) Records of investigations pursuant to the statute that result in a sustained finding of misconduct are exempted from certain existing confidentiality protections. (Pen. Code, § 13683.)

The Department is directed to “promulgate guidelines for the investigation and adjudication of a complaint” that “alleges, with sufficient particularity to investigate the matter, that a peace officer” has engaged in Covered Misconduct, whether such complaint is internal or received from the public. (Pen. Code, § 13682, subds. (a), (c).)

In fulfilling its obligation to promulgate such regulations, the Department must ensure that affected agencies are provided with clear rules to facilitate the acceptance of complaints in all forms, the effective and efficient investigation of such complaints, and their fair adjudication. In so doing, the Department must balance the statute's interest in promoting effective, efficient, and timely investigation and resolution of covered misconduct with the need to protect due process interests and avoid undue burden on affected agencies.

Effect of the Proposed Rulemaking:

The proposed regulations establish rules for the investigation and adjudication of complaints involving the specific conduct addressed by AB 655 – namely, membership in hate groups, participation in hate group activity, and public expressions of hate, as those concepts are defined in the statute.

With respect to investigations, the proposed regulations establish uniform standards for the receipt of both public and internal complaints, the initial evaluation of complaints to determine whether they are governed by the statute, and the conduct of investigations. These rules will ensure that investigations are conducted effectively and are able to address the unique needs of the cases governed by AB 655. With respect to adjudications, the proposed regulations establish uniform standards for evaluation of evidence, with the aims of ensuring that investigation subjects receive due process and that agencies fully consider evidence collected during investigations.

Anticipated Benefits of the Proposed Regulations:

AB 655 requires the Department to promulgate rules governing the investigation and adjudication of complaints of Covered Misconduct. The overarching benefits of the proposed regulatory action are anticipated to give effect to the expressed purpose of the statute, namely, “[t]o increase public trust in law enforcement” and to “root out those who would jeopardize public safety with their extremist and violent behavior.”¹ Broadly speaking, such efforts should also be expected to reduce incidences of bias in law enforcement activity, to reduce the number and severity of use-of-force incidents, and to promote efficiency in law enforcement agencies by removing from service peace officers who may be prone to more frequent or more severe misconduct. As a result, the implementation of AB 655 through the proposed regulations will

¹ August 25, 2022, Assembly Floor Analysis, available at https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202120220AB655.

benefit public health and welfare and promote worker safety among personnel of law enforcement agencies.

Within these broad aims, the proposed regulations are specifically anticipated to promote the quality of law enforcement internal investigation and adjudication processes. The proposed regulations clarify terms and concepts presented in the statute in order to avoid inconsistency, arbitrariness, and confusion in investigations and adjudications conducted pursuant to AB 655. The regulations also clarify the relationship between Covered Misconduct and “serious misconduct” that must be reported to the Commission on Peace Officer Standards and Training at certain stages following receipt of a complaint. (*See* Pen. Code, §§ 13510.8, 13510.9.) These clarifications will help to establish law enforcement agency reporting obligations and avoid uncertainty or duplicative processes.

The author of the bill identified its purpose as follows:

“Over the past fifteen years, the FBI has identified organizations committed to 'domestic terrorism' that include militia extremists and white supremacist extremists with active links to law enforcement. Without any coordinated federal response to this prevalent issue, state action is long overdue. Sheriff's departments across our state have been plagued by texting, email, and social media scandals where officers exchanged racist and homophobic messages. Continued failure to address extremism, racism, and bias among peace officers enables this behavior to continue and contributes to the erosion of public confidence in law enforcement.

To increase public trust in law enforcement AB 655 will help root out those who would jeopardize public safety with their extremist and violent behavior.”²

Comparable Federal Regulations:

There are no existing federal regulations or statutes comparable to these proposed regulations.

Determination of Inconsistency/Incompatibility with Existing State Regulations:

The Department has determined these proposed regulations are not inconsistent or incompatible with any existing state regulations, because there are no existing regulations that address the specific subject matter of the proposed regulations, namely, the requirement that agencies that employ peace officers (as defined) are required to investigate and adjudicate complaints regarding certain misconduct and terminate officers if findings regarding that misconduct are sustained.

There are existing state regulations that address civilian complaints, but none specifically regarding complaints about Covered Misconduct. Moreover, the statute explicitly provides that its scope overrides any existing and potentially conflicting laws, other than two provisions of the Peace Officer Bill of Rights concerning appeals of disciplinary actions (*see* Pen. Code, § 13680,

² August 25, 2022, Assembly Floor Analysis, available at https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202120220AB655.

subd. (h)). (See Pen. Code, § 13682, subd. (a) [overriding Government Code section 19635 “or any other law” regarding the investigation of complaints of Covered Misconduct]; Pen. Code, § 13683, subd. (a) [overriding Penal Code section 832.7, Government Code section 6254, “or any other law” regarding the non-confidentiality of records regarding investigations in which a finding of misconduct is sustained].) Accordingly, the proposed regulations comport with the statute’s mandate that the statute overrides any existing laws or regulations regarding the investigation and confidentiality of records related to the investigations where findings are sustained.

Regarding civilian complaints about peace officer misconduct generally, and about certain categories of peace officers, there are state laws and regulations that provide for different timelines than what is permitted by the statute (the regulations simply restate these timelines, namely, that a complaint can be investigated for conduct that occurred up to seven years prior, and that termination can be based on this misconduct).

Below are examples of state laws, regulations, and potential policies that broadly address the intake of civilian complaints and investigation of police officer misconduct which may vary from the statute and proposed regulations implementing the statute:

- Gov. Code, § 3303, subds. (b), (c) (notice to subject in advance of interview)
- Gov. Code, § 3303, subd. (b) (limit of two interrogators)
- Gov. Code, § 3303, subd. (g) (subject access to evidence during investigation)
- Gov. Code, § 3303, subd. (i) (absolute right to counsel during interview)
- Gov. Code, § 3304, subd. (d) (no disciplinary action if investigation not completed within one year)
- Gov. Code, § 19635 (notice of adverse action against state employee must be served within three years after the cause for discipline—which is the basis for the action—first arose, except that action based on fraud, embezzlement, or the falsification of records must be brought within three years after the discovery of such)
- Pen. Code, § 148.6, subd. (a)(2) (requiring advisory to complainants that false complaints may be prosecuted)
- Pen. Code, § 832.7 (regarding confidentiality of records relating to civilian complaints)
- Cal. Code Regs., tit. 15, § 3417 (setting forth procedure for non-inmate civilians to submit complaints against correctional officers, stating that “[c]itizen’s complaints alleging misconduct of a departmental peace officer shall be filed within twelve months of the alleged misconduct.”)

- Any policy or collective bargaining agreement requiring, in all circumstances, that administrative investigations be postponed pending resolution of any related criminal investigation
- Any policy or collective bargaining agreement preventing an investigative or adjudicative authority from drawing an adverse inference from a subject's refusal to answer questions or provide evidence in the context of an administrative investigation

Forms Incorporated by Reference:

None.

Other Statutory Requirements:

None.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department's Initial Determinations:

Mandate on local agencies or school districts: None/de minimis.

Cost or savings to any state agency: None/de minimis.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.

Other non-discretionary costs or savings imposed on local agencies: None/de minimis.

Cost or savings in federal funding to the state: None.

Cost impacts on representative person or business: The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Significant effect on housing costs: None.

Significant, statewide adverse economic impact directly affecting businesses, including ability to compete: The Department has made an initial determination that that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Results of the Economic Impact Assessment (EIA):

The Department concludes that the proposed regulations are unlikely (1) to create or eliminate jobs within the state, (2) to create new businesses or eliminate existing businesses within the state, or (3) to result in the expansion of businesses currently doing business within the state.

The statutory provisions implemented by the proposed regulations directly affect only state and local government agencies,³ which will be required to accept complaints of certain forms of misconduct, to provide variable levels of investigation and review of those complaints, and to adjudicate substantiated complaints. It is impossible to predict even a very approximate cost to affected agencies, because, given the covert nature of the misconduct at issue and the novelty of the statute itself, there are no reliable estimates of the extent of misconduct at issue or of the likelihood that such misconduct will ultimately be reported.

In any event, the proposed regulations do not impose any material costs beyond those imposed by the statute itself. As much as possible, the proposed regulations permit affected agencies to integrate the statute's requirements into existing policies. Particularly given that all affected agencies are already required to accept and investigate complaints of misconduct (*see, e.g.*, Pen. Code, § 832.5), to the extent that the regulations themselves impose any burden in terms of required labor, that burden is both de minimis and the minimum necessary to give effect to the aims of the statute.

The implementation of the regulations will not require substantial hiring of new personnel, purchase of information technology, or entry into contracts for labor or equipment.

Benefits of the proposed action:

The Department concludes that:

- (1) The proposal would benefit the health and welfare of California residents by removing peace officers who, through their engagement in the misconduct identified by the statute, undermine the public's trust in law enforcement and have demonstrated a significant likelihood of engaging in acts of unlawful discrimination, unlawful use of force, and other abuses of constitutional rights under color of law. All Californians stand to benefit from the removal from office of perpetrators of the misconduct identified in the statute.
- (2) The proposal would benefit worker safety by removing from employment law enforcement personnel who have been found to have engaged in misconduct representing bias, engagement in hate crimes, or other characteristics that pose an imminent danger to other personnel.
- (3) The proposal would not benefit the state's environment.

Business report requirement: None. Any reporting requirements imposed by the proposed action apply to government agencies, not businesses.

Small business determination: The Department has determined that this proposed action does not affect small businesses because its direct application is only to government agencies; moreover, there is no reasonably foreseeable increase or decrease in demand for small business goods or services as a result of compliance with the proposed action.

³ While the regulations contemplate the possibility that a federal agency may fill the role of Appropriate Oversight Agency—for example, if a local agency is under federal monitoring or receivership—a federal agency would not be bound by these regulations.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Department must determine that no reasonable alternative considered by the Department—or that has otherwise been identified and brought to the attention of the Department—would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Department has determined that the proposed regulations are the most effective way to comply with its statutory obligation to create rules for the investigation and adjudication of complaints involving membership in hate groups, participation in hate group activity, or public expressions of hate.

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Department of Justice
Civil Rights Enforcement Section
Attn: M. Newman, Senior Assistant Attorney General
P.O. Box 160608
Sacramento, CA 95816-0608
(213) 269-6766
CLEARACT@doj.ca.gov

Questions regarding procedure, comments, or the substance of the proposed action should be addressed to the above contact person. In the event the contact person is unavailable, inquiries regarding the proposed action may be directed to the following backup contact person:

Department of Justice
Civil Rights Enforcement Section
Attn: C. Chuang, Supervising Deputy Attorney General
P.O. Box 160608
Sacramento, CA 95816-0608
(213) 269-6766
CLEARACT@doj.ca.gov

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE

The Department will have the entire rulemaking file available for inspection and copying throughout the rulemaking process upon request to the contact person above. As of the date this Notice of Proposed Rulemaking (Notice) is published in the Notice Register, the rulemaking file consists of this Notice, the Text of Proposed Regulations (the “express terms” of the regulations), the Initial Statement of Reasons, and any information upon which the proposed rulemaking is

based. The text of this Notice, the express terms, the Initial Statement of Reasons, and any information upon which the proposed rulemaking is based are available on the Department's website at www.oag.ca.gov/AB655. Please refer to the contact information listed above to obtain copies of these documents.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments received during the 45-day public comment period, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before it adopts the proposed regulations as revised. Copies of any modified text will be available on the Department of Justice's website at www.oag.ca.gov/AB655. Please send requests for copies of any modified regulations to the attention of the name and address indicated above. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the final statement of reasons will be available on the Department's website at www.oag.ca.gov/AB655. Please refer to the contact information included above to obtain a written copy of the Final Statement of Reasons.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of this notice, the initial statement of reasons, the text of the proposed regulations, and any information upon which the proposed rulemaking is based are available on the Department's website at: www.oag.ca.gov/AB655.