

AMENDED IN SENATE APRIL 2, 2025

AMENDED IN SENATE MARCH 24, 2025

SENATE BILL

No. 734

Introduced by Senator Caballero

February 21, 2025

An act to add Section 3305.6 to the Government Code, and to amend Sections 745 and 13510.8 of the Penal Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

SB 734, as amended, Caballero. Criminal procedure: discrimination.

Existing law, the Public Safety Officers Procedural Bill of Rights Act, grants certain employment rights to public safety officers, as defined. The act prohibits, among other things, any punitive action against a public safety officer, denial of promotion on grounds other than merit, or threat of such treatment, because of the lawful exercise of the rights granted under the act, or the exercise of any rights under any existing administrative grievance procedure.

Existing law, the *California Racial Justice Act, Act of 2020*, prohibits the state from seeking a criminal conviction or sentence on the basis of race, ethnicity, or national origin. Existing law authorizes a defendant to file a motion in the trial court or, if judgment has been imposed, to file a petition for writ of habeas corpus to allege a violation of this prohibition.

Existing law authorizes the Commission on Peace Officer Standards and Training to revoke the certification of a peace officer if the officer has, while employed as a peace officer, engaged in serious misconduct including, among other things, demonstrating bias on the basis of race, national origin, religion, gender identity or expression, housing status,

sexual orientation, mental or physical disability, or other protected status in violation of law or department policy or inconsistent with a peace officer's obligation to carry out their duties in a fair and unbiased manner.

This bill would prohibit a punitive action, denial of promotion on grounds other than merit, or a revocation of certification proceeding from being undertaken against any public safety officer solely on the basis of a court finding made in a challenge brought under the *California Racial Justice Act, Act of 2020*, and would prohibit those court findings from being introduced for any purpose in any administrative appeal of a punitive action. The bill would ~~require~~ *require, if the defendant is represented by an attorney in a case brought under the California Racial Justice Act to provide notice of a hearing pursuant to the act to any person accused of bias or racial animus in the proceeding, and would authorize any person accused of bias or racial animus in those proceedings, or any interested party on behalf of those persons or of the defendant, to submit an amicus brief to the court. of 2020, and the motion is based, in whole or in part, on the conduct of a law enforcement officer; the attorney to serve a copy of the motion on the law enforcement agency employing the officer.*

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 3305.6 is added to the Government Code,
2 to read:
3 3305.6. (a) A punitive action or denial of promotion on
4 grounds other than merit shall not be undertaken by any public
5 agency against any public safety officer solely because of a court
6 finding made in a challenge brought pursuant to Section 745 of
7 the Penal Code.
8 (b) This section does not prohibit a public agency from taking
9 punitive action, denying promotion on grounds other than merit,
10 or taking other personnel action against a public safety officer
11 based on the underlying acts or omissions which formed the basis
12 of the action brought pursuant to Section 745 of the Penal Code,
13 if the actions taken by the public agency otherwise conform to all
14 the rules and procedures applicable to those proceedings, and the

1 officer is accorded all due process protections provided in those
2 proceedings.

3 (c) Evidence of a court finding of a violation of Section 745 of
4 the Penal Code shall not be introduced for any purpose in any
5 administrative appeal of a punitive action, except as provided in
6 subdivision (d). *action.*

7 ~~(d) Evidence that a public safety officer violated Section 745~~
8 ~~of the Penal Code may only be introduced if, during the~~
9 ~~administrative appeal of a punitive action against an officer, the~~
10 ~~underlying act or omission the officer allegedly committed is~~
11 ~~proven and the officer is found to be subject to some form of~~
12 ~~punitive action. If the hearing officer or other administrative appeal~~
13 ~~tribunal finds or determines that a public safety officer has~~
14 ~~committed the underlying acts or omissions that will result in a~~
15 ~~punitive action, denial of a promotion on grounds other than merit,~~
16 ~~or any other adverse personnel action, and evidence exists that a~~
17 ~~public safety officer violated Section 745 of the Penal Code, then~~
18 ~~the evidence shall be introduced for the sole purpose of determining~~
19 ~~the type or level of punitive action to be imposed.~~

20 (e)

21 (d) This section does not grant immunity for civil or criminal
22 liability for the underlying acts or omissions which formed the
23 basis of the action brought under Section 745 of the Penal Code.

24 SEC. 2. Section 745 of the Penal Code is amended to read:

25 745. (a) The state shall not seek or obtain a criminal conviction
26 or seek, obtain, or impose a sentence on the basis of race, ethnicity,
27 or national origin. A violation is established if the defendant proves,
28 by a preponderance of the evidence, any of the following:

29 (1) The judge, an attorney in the case, a law enforcement officer
30 involved in the case, an expert witness, or juror exhibited bias or
31 animus towards the defendant because of the defendant's race,
32 ethnicity, or national origin.

33 (2) During the defendant's trial, in court and during the
34 proceedings, the judge, an attorney in the case, a law enforcement
35 officer involved in the case, an expert witness, or juror, used
36 racially discriminatory language about the defendant's race,
37 ethnicity, or national origin, or otherwise exhibited bias or animus
38 towards the defendant because of the defendant's race, ethnicity,
39 or national origin, whether or not purposeful. This paragraph does
40 not apply if the person speaking is relating language used by

1 another that is relevant to the case or if the person speaking is
2 giving a racially neutral and unbiased physical description of the
3 suspect.

4 (3) The defendant was charged or convicted of a more serious
5 offense than defendants of other races, ethnicities, or national
6 origins who have engaged in similar conduct and are similarly
7 situated, and the evidence establishes that the prosecution more
8 frequently sought or obtained convictions for more serious offenses
9 against people who share the defendant's race, ethnicity, or national
10 origin in the county where the convictions were sought or obtained.

11 (4) (A) A longer or more severe sentence was imposed on the
12 defendant than was imposed on other similarly situated individuals
13 convicted of the same offense, and longer or more severe sentences
14 were more frequently imposed for that offense on people that share
15 the defendant's race, ethnicity, or national origin than on
16 defendants of other races, ethnicities, or national origins in the
17 county where the sentence was imposed.

18 (B) A longer or more severe sentence was imposed on the
19 defendant than was imposed on other similarly situated individuals
20 convicted of the same offense, and longer or more severe sentences
21 were more frequently imposed for the same offense on defendants
22 in cases with victims of one race, ethnicity, or national origin than
23 in cases with victims of other races, ethnicities, or national origins,
24 in the county where the sentence was imposed.

25 (b) A defendant may file a motion pursuant to this section, or
26 a petition for writ of habeas corpus or a motion under Section
27 1473.7, in a court of competent jurisdiction, alleging a violation
28 of subdivision (a). For claims based on the trial record, a defendant
29 may raise a claim alleging a violation of subdivision (a) on direct
30 appeal from the conviction or sentence. The defendant may also
31 move to stay the appeal and request remand to the superior court
32 to file a motion pursuant to this section. If the motion is based in
33 whole or in part on conduct or statements by the judge, the judge
34 shall disqualify themselves from any further proceedings under
35 this section.

36 (c) If a motion is filed in the trial court and the defendant makes
37 a prima facie showing of a violation of subdivision (a), the trial
38 court shall hold a hearing. A motion made at trial shall be made
39 as soon as practicable upon the defendant learning of the alleged

1 violation. A motion that is not timely may be deemed waived, in
2 the discretion of the court.

3 (1) At the hearing, evidence may be presented by either party,
4 including, but not limited to, statistical evidence, aggregate data,
5 expert testimony, and the sworn testimony of witnesses. The court
6 may also appoint an independent expert. For the purpose of a
7 motion and hearing under this section, out-of-court statements that
8 the court finds trustworthy and reliable, statistical evidence, and
9 aggregated data are admissible for the limited purpose of
10 determining whether a violation of subdivision (a) has occurred.

11 (2) The defendant shall have the burden of proving a violation
12 of subdivision (a) by a preponderance of the evidence. The
13 defendant does not need to prove intentional discrimination.

14 ~~(3) (A) Any person accused of bias or racial animus in a~~
15 ~~proceeding pursuant to this section shall be provided notice of the~~
16 ~~allegations by the defendant prior to a motion being filed pursuant~~
17 ~~to this section.~~

18 ~~(B) Any person accused of bias or racial animus in a proceeding~~
19 ~~pursuant to this section, any interested party on behalf of a person~~
20 ~~accused of bias or racial animus in a proceeding pursuant to this~~
21 ~~section, or any interested party on behalf of a defendant may submit~~
22 ~~an amicus brief to the court.~~

23 *(3) If the defendant is represented by an attorney and the motion*
24 *alleges a violation of paragraph (1) or (2) of subdivision (a), based*
25 *in whole or in part on the conduct of one or more law enforcement*
26 *officers, the attorney shall serve a copy of the motion on the law*
27 *enforcement agency or agencies that employed the officer or*
28 *officers.*

29 (4) At the conclusion of the hearing, the court shall make
30 findings on the record.

31 (d) A defendant may file a motion requesting disclosure to the
32 defense of all evidence relevant to a potential violation of
33 subdivision (a) in the possession or control of the state. A motion
34 filed under this section shall describe the type of records or
35 information the defendant seeks. Upon a showing of good cause,
36 the court shall order the records to be released. Upon a showing
37 of good cause, and in order to protect a privacy right or privilege,
38 the court may permit the prosecution to redact information prior
39 to disclosure or may subject disclosure to a protective order. If a
40 statutory privilege or constitutional privacy right cannot be

1 adequately protected by redaction or a protective order, the court
2 shall not order the release of the records.

3 (e) Notwithstanding any other law, except as provided in
4 subdivision (k), or for an initiative approved by the voters, if the
5 court finds, by a preponderance of evidence, a violation of
6 subdivision (a), the court shall impose a remedy specific to the
7 violation found from the following list:

8 (1) Before a judgment has been entered, the court may impose
9 any of the following remedies:

10 (A) Declare a mistrial, if requested by the defendant.

11 (B) Discharge the jury panel and empanel a new jury.

12 (C) If the court determines that it would be in the interest of
13 justice, dismiss enhancements, special circumstances, or special
14 allegations, or reduce one or more charges.

15 (2) (A) After a judgment has been entered, if the court finds
16 that a conviction was sought or obtained in violation of subdivision
17 (a), the court shall vacate the conviction and sentence, find that it
18 is legally invalid, and order new proceedings consistent with
19 subdivision (a). If the court finds that the only violation of
20 subdivision (a) that occurred is based on paragraph (3) of
21 subdivision (a), the court may modify the judgment to a lesser
22 included or lesser related offense. On resentencing, the court shall
23 not impose a new sentence greater than that previously imposed.

24 (B) After a judgment has been entered, if the court finds that
25 only the sentence was sought, obtained, or imposed in violation
26 of subdivision (a), the court shall vacate the sentence, find that it
27 is legally invalid, and impose a new sentence. On resentencing,
28 the court shall not impose a new sentence greater than that
29 previously imposed.

30 (3) When the court finds there has been a violation of
31 subdivision (a), the defendant shall not be eligible for the death
32 penalty.

33 (4) The remedies available under this section do not foreclose
34 any other remedies available under the United States Constitution,
35 the California Constitution, or any other law.

36 (f) This section also applies to adjudications and dispositions
37 in the juvenile delinquency system and adjudications to transfer a
38 juvenile case to adult court.

39 (g) This section shall not prevent the prosecution of hate crimes
40 pursuant to Sections 422.6 to 422.865, inclusive.

1 (h) As used in this section, the following definitions apply:

2 (1) “More frequently sought or obtained” or “more frequently
3 imposed” means that the totality of the evidence demonstrates a
4 significant difference in seeking or obtaining convictions or in
5 imposing sentences comparing individuals who have engaged in
6 similar conduct and are similarly situated, and the prosecution
7 cannot establish race-neutral reasons for the disparity. The evidence
8 may include statistical evidence, aggregate data, or nonstatistical
9 evidence. Statistical significance is a factor the court may consider,
10 but is not necessary to establish a significant difference. In
11 evaluating the totality of the evidence, the court shall consider
12 whether systemic and institutional racial bias, racial profiling, and
13 historical patterns of racially biased policing and prosecution may
14 have contributed to, or caused differences observed in, the data or
15 impacted the availability of data overall. Race-neutral reasons shall
16 be relevant factors to charges, convictions, and sentences that are
17 not influenced by implicit, systemic, or institutional bias based on
18 race, ethnicity, or national origin.

19 (2) “Prima facie showing” means that the defendant produces
20 facts that, if true, establish that there is a substantial likelihood that
21 a violation of subdivision (a) occurred. For purposes of this section,
22 a “substantial likelihood” requires more than a mere possibility,
23 but less than a standard of more likely than not.

24 (3) “Relevant factors,” as that phrase applies to sentencing,
25 means the factors in the California Rules of Court that pertain to
26 sentencing decisions and any additional factors required to or
27 permitted to be considered in sentencing under state law and under
28 the state and federal constitutions.

29 (4) “Racially discriminatory language” means language that, to
30 an objective observer, explicitly or implicitly appeals to racial bias,
31 including, but not limited to, racially charged or racially coded
32 language, language that compares the defendant to an animal, or
33 language that references the defendant’s physical appearance,
34 culture, ethnicity, or national origin. Evidence that particular words
35 or images are used exclusively or disproportionately in cases where
36 the defendant is of a specific race, ethnicity, or national origin is
37 relevant to determining whether language is discriminatory.

38 (5) “State” includes the Attorney General, a district attorney,
39 or a city prosecutor.

(6) “Similarly situated” means that factors that are relevant in charging and sentencing are similar and do not require that all individuals in the comparison group are identical. A defendant’s conviction history may be a relevant factor to the severity of the charges, convictions, or sentences. If it is a relevant factor and the defense produces evidence that the conviction history may have been impacted by racial profiling or historical patterns of racially biased policing, the court shall consider the evidence.

(i) A defendant may share a race, ethnicity, or national origin with more than one group. A defendant may aggregate data among groups to demonstrate a violation of subdivision (a).

(j) This section applies as follows:

(1) To all cases in which judgment is not final.

(2) Commencing January 1, 2023, to all cases in which, at the time of the filing of a petition pursuant to subdivision (e) of Section 1473 raising a claim under this section, the petitioner is sentenced to death or to cases in which the motion is filed pursuant to Section 1473.7 because of actual or potential immigration consequences related to the conviction or sentence, regardless of when the judgment or disposition became final.

(3) Commencing January 1, 2024, to all cases in which, at the time of the filing of a petition pursuant to subdivision (e) of Section 1473 raising a claim under this section, the petitioner is currently serving a sentence in the state prison or in a county jail pursuant to subdivision (h) of Section 1170, or committed to the Division of Juvenile Justice for a juvenile disposition, regardless of when the judgment or disposition became final.

(4) Commencing January 1, 2025, to all cases filed pursuant to Section 1473.7 or subdivision (e) of Section 1473 in which judgment became final for a felony conviction or juvenile disposition that resulted in a commitment to the Division of Juvenile Justice on or after January 1, 2015.

(5) Commencing January 1, 2026, to all cases filed pursuant to Section 1473.7 or subdivision (e) of Section 1473 in which judgment was for a felony conviction or juvenile disposition that resulted in a commitment to the Division of Juvenile Justice, regardless of when the judgment or disposition became final.

(k) For petitions that are filed in cases for which judgment was entered before January 1, 2021, and only in those cases, if the petition is based on a violation of paragraph (1) or (2) of

1 subdivision (a), the petitioner shall be entitled to relief as provided
2 in subdivision (e), unless the state proves beyond a reasonable
3 doubt that the violation did not contribute to the judgment.

4 SEC. 3. Section 13510.8 of the Penal Code is amended to read:

5 13510.8. (a) (1) The commission shall revoke the certification
6 of a certified peace officer if the person is or has become ineligible
7 to hold office as a peace officer pursuant to Section 1029 of the
8 Government Code.

9 (2) The commission may suspend or revoke the certification of
10 a peace officer if the person has been terminated for cause from
11 employment as a peace officer for, or has, while employed as a
12 peace officer, otherwise engaged in, any serious misconduct as
13 described in subdivision (b).

14 (3) The commission may cancel the certificate or proof of
15 eligibility of a peace officer if the commission determines that
16 there was fraud or misrepresentation made by an applicant at any
17 time during the application process that resulted in the issuance
18 of the certification.

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

23 (1) Dishonesty relating to the reporting, investigation, or
24 prosecution of a crime, or relating to the reporting of, or
25 investigation of misconduct by, a peace officer or custodial officer,
26 including, but not limited to, false statements, intentionally filing
27 false reports, tampering with, falsifying, destroying, or concealing
28 evidence, perjury, and tampering with data recorded by a
29 body-worn camera or other recording device for purposes of
30 concealing misconduct.

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

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

36 (4) Sexual assault, as described in subdivision (b) of Section
37 832.7.

38 (5) Demonstrating bias on the basis of race, national origin,
39 religion, gender identity or expression, housing status, sexual
40 orientation, mental or physical disability, or other protected status

1 in violation of law or department policy or inconsistent with a
2 peace officer's obligation to carry out their duties in a fair and
3 unbiased manner. This paragraph does not limit an employee's
4 rights under the First Amendment to the United States Constitution.

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

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

29 (8) Failure to cooperate with an investigation into potential
30 police misconduct, including an investigation conducted pursuant
31 to this chapter. For purposes of this paragraph, the lawful exercise
32 of rights granted under the United States Constitution, the
33 California Constitution, or any other law shall not be considered
34 a failure to cooperate.

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

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

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

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

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

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

25 (4) The division, in carrying out any investigation initiated
26 pursuant to this section or any other duty shall have all of the
27 powers of investigation granted pursuant to Article 2 (commencing
28 with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title
29 2 of the Government Code.

30 (5) Notwithstanding any other law, the investigation shall be
31 completed within three years after the receipt of the completed
32 report of the disciplinary or internal affairs investigation from the
33 employing agency pursuant to Section 13510.9, however, no time
34 limit shall apply if a report of the conduct was not made to the
35 commission. An investigation shall be considered completed upon
36 a notice of intent to deny, suspend, or revoke certification issued
37 pursuant to paragraph (1) of subdivision (a) of Section 13510.85.
38 The time limit shall be tolled during the appeal of a termination
39 or other disciplinary action through an administrative or judicial
40 proceeding or during any criminal prosecution of the peace officer.

1 The commission shall consider the peace officer's prior conduct
2 and service record, and any instances of misconduct, including
3 any incidents occurring beyond the time limitation for investigation
4 in evaluating whether to revoke certification for the incident under
5 investigation.

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

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

31 (e) Records of an investigation of any person by the commission
32 shall be retained for 30 years following the date that the
33 investigation is deemed concluded by the commission. The
34 commission may destroy records prior to the expiration of the
35 30-year retention period if the subject is deceased and no action
36 upon the complaint was taken by the commission beyond the
37 commission's initial intake of the complaint.

38 (f) Any peace officer may voluntarily surrender their
39 certification permanently. Voluntary permanent surrender of
40 certification pursuant to this subdivision shall have the same effect

1 as revocation. Voluntary permanent surrender is not the same as
2 placement of a valid certification into inactive status during a
3 period in which a person is not actively employed as a peace
4 officer. A permanently surrendered certification cannot be
5 reactivated.

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

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

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

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

18 (h) (1) A revocation of certification shall not be undertaken
19 pursuant to this section solely because of a court finding made in
20 a challenge brought pursuant to Section 745.

21 (2) This subdivision does not prohibit revocation based on the
22 underlying acts or omissions which formed the basis of the action
23 brought pursuant to Section 745, if the revocation otherwise
24 conforms to all the rules and procedures applicable to those
25 proceedings, and the officer is accorded all due process protections
26 provided in those proceedings.