

AMENDED IN SENATE MARCH 24, 2025

SENATE BILL

No. 734

Introduced by Senator Caballero

February 21, 2025

An act to ~~amend Section 745~~ 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~~ *Existing law, the Racial Justice Act, 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 Racial Justice Act, and would prohibit those court findings from being introduced for any purpose in any administrative appeal of a punitive action. The bill would require the defendant in a case brought under the Racial Justice Act to provide notice of a hearing pursuant to these provisions the act to any person accused of bias or racial animus in the proceeding, and would require the person accused of bias or racial animus to be given the right to representation during the hearing, including, but not limited to, the right for their representative to test the sufficiency of the evidence by asking questions of the witnesses. 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.

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
15 officer is accorded all due process protections provided in those
16 proceedings.

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

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

18 (e) This section does not grant immunity for civil or criminal
19 liability for the underlying acts or omissions which formed the
20 basis of the action brought under Section 745 of the Penal Code.

21 **SECTION 1.**

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

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

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

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

1 giving a racially neutral and unbiased physical description of the
2 suspect.

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

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

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

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

35 (c) If a motion is filed in the trial court and the defendant makes
36 a prima facie showing of a violation of subdivision (a), the trial
37 court shall hold a hearing. A motion made at trial shall be made
38 as soon as practicable upon the defendant learning of the alleged
39 violation. A motion that is not timely may be deemed waived, in
40 the discretion of the court.

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

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

12 (3) (A) Any person accused of bias or racial animus in a
13 proceeding pursuant to this section shall be provided notice of the
14 allegations by the defendant, and ~~be given the right to~~
15 ~~representation during the hearing, including, but not limited to,~~
16 ~~the right for their representative to test the sufficiency of the~~
17 ~~evidence by asking questions of the witnesses.~~ *defendant prior to*
18 *a motion being filed pursuant to this section.*

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

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

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

38 (e) Notwithstanding any other law, except as provided in
39 subdivision (k), or for an initiative approved by the voters, if the
40 court finds, by a preponderance of evidence, a violation of

subdivision (a), the court shall impose a remedy specific to the violation found from the following list:

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

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

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

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

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

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

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

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

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

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

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

(1) “More frequently sought or obtained” or “more frequently imposed” means that the totality of the evidence demonstrates a significant difference in seeking or obtaining convictions or in imposing sentences comparing individuals who have engaged in

1 similar conduct and are similarly situated, and the prosecution
2 cannot establish race-neutral reasons for the disparity. The evidence
3 may include statistical evidence, aggregate data, or nonstatistical
4 evidence. Statistical significance is a factor the court may consider,
5 but is not necessary to establish a significant difference. In
6 evaluating the totality of the evidence, the court shall consider
7 whether systemic and institutional racial bias, racial profiling, and
8 historical patterns of racially biased policing and prosecution may
9 have contributed to, or caused differences observed in, the data or
10 impacted the availability of data overall. Race-neutral reasons shall
11 be relevant factors to charges, convictions, and sentences that are
12 not influenced by implicit, systemic, or institutional bias based on
13 race, ethnicity, or national origin.

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

19 (3) “Relevant factors,” as that phrase applies to sentencing,
20 means the factors in the California Rules of Court that pertain to
21 sentencing decisions and any additional factors required to or
22 permitted to be considered in sentencing under state law and under
23 the state and federal constitutions.

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

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

35 (6) “Similarly situated” means that factors that are relevant in
36 charging and sentencing are similar and do not require that all
37 individuals in the comparison group are identical. A defendant’s
38 conviction history may be a relevant factor to the severity of the
39 charges, convictions, or sentences. If it is a relevant factor and the
40 defense produces evidence that the conviction history may have

1 been impacted by racial profiling or historical patterns of racially
2 biased policing, the court shall consider the evidence.

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

6 (j) This section applies as follows:

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

8 (2) Commencing January 1, 2023, to all cases in which, at the
9 time of the filing of a petition pursuant to subdivision (e) of Section
10 1473 raising a claim under this section, the petitioner is sentenced
11 to death or to cases in which the motion is filed pursuant to Section
12 1473.7 because of actual or potential immigration consequences
13 related to the conviction or sentence, regardless of when the
14 judgment or disposition became final.

15 (3) Commencing January 1, 2024, to all cases in which, at the
16 time of the filing of a petition pursuant to subdivision (e) of Section
17 1473 raising a claim under this section, the petitioner is currently
18 serving a sentence in the state prison or in a county jail pursuant
19 to subdivision (h) of Section 1170, or committed to the Division
20 of Juvenile Justice for a juvenile disposition, regardless of when
21 the judgment or disposition became final.

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

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

32 (k) For petitions that are filed in cases for which judgment was
33 entered before January 1, 2021, and only in those cases, if the
34 petition is based on a violation of paragraph (1) or (2) of
35 subdivision (a), the petitioner shall be entitled to relief as provided
36 in subdivision (e), unless the state proves beyond a reasonable
37 doubt that the violation did not contribute to the judgment.

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

39 13510.8. (a) (1) The commission shall revoke the certification
40 of a certified peace officer if the person is or has become ineligible

1 to hold office as a peace officer pursuant to Section 1029 of the
2 Government Code.

3 (2) The commission may suspend or revoke the certification of
4 a peace officer if the person has been terminated for cause from
5 employment as a peace officer for, or has, while employed as a
6 peace officer, otherwise engaged in, any serious misconduct as
7 described in subdivision (b).

8 (3) The commission may cancel the certificate or proof of
9 eligibility of a peace officer if the commission determines that
10 there was fraud or misrepresentation made by an applicant at any
11 time during the application process that resulted in the issuance
12 of the certification.

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

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

25 (2) Abuse of power, including, but not limited to, intimidating
26 witnesses, knowingly obtaining a false confession, and knowingly
27 making a false arrest.

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

30 (4) Sexual assault, as described in subdivision (b) of Section
31 832.7.

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

39 (6) Acts that violate the law and are sufficiently egregious or
40 repeated as to be inconsistent with a peace officer’s obligation to

1 uphold the law or respect the rights of members of the public, as
2 determined by the commission.

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

23 (8) Failure to cooperate with an investigation into potential
24 police misconduct, including an investigation conducted pursuant
25 to this chapter. For purposes of this paragraph, the lawful exercise
26 of rights granted under the United States Constitution, the
27 California Constitution, or any other law shall not be considered
28 a failure to cooperate.

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

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

39 (2) The division shall promptly review any grounds for
40 decertification described in subdivision (a) received from an

1 agency. The division shall have the authority to review any agency
2 or other investigative authority file, as well as to conduct additional
3 investigation, if necessary. The division shall only have authority
4 to review and investigate allegations for purposes of decertification.

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

11 (B) The commission, in its discretion, may direct the division
12 to review an investigative file. The commission, either upon its
13 own motion or in response to a recommendation from the board,
14 may direct the division to investigate any potential grounds for
15 decertification of a peace officer.

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

19 (4) The division, in carrying out any investigation initiated
20 pursuant to this section or any other duty shall have all of the
21 powers of investigation granted pursuant to Article 2 (commencing
22 with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title
23 2 of the Government Code.

24 (5) Notwithstanding any other law, the investigation shall be
25 completed within three years after the receipt of the completed
26 report of the disciplinary or internal affairs investigation from the
27 employing agency pursuant to Section 13510.9, however, no time
28 limit shall apply if a report of the conduct was not made to the
29 commission. An investigation shall be considered completed upon
30 a notice of intent to deny, suspend, or revoke certification issued
31 pursuant to paragraph (1) of subdivision (a) of Section 13510.85.
32 The time limit shall be tolled during the appeal of a termination
33 or other disciplinary action through an administrative or judicial
34 proceeding or during any criminal prosecution of the peace officer.
35 The commission shall consider the peace officer's prior conduct
36 and service record, and any instances of misconduct, including
37 any incidents occurring beyond the time limitation for investigation
38 in evaluating whether to revoke certification for the incident under
39 investigation.

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

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

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

33 (f) Any peace officer may voluntarily surrender their
34 certification permanently. Voluntary permanent surrender of
35 certification pursuant to this subdivision shall have the same effect
36 as revocation. Voluntary permanent surrender is not the same as
37 placement of a valid certification into inactive status during a
38 period in which a person is not actively employed as a peace
39 officer. A permanently surrendered certification cannot be
40 reactivated.

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

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

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

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

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

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