

AMENDED IN SENATE MAY 8, 2025
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~~ 745, 1473, 1473.7, 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 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 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, if the defendant is represented by an attorney in a case brought under the California Racial Justice Act of 2020, *in the prosecution of a writ of habeas corpus, or in the filing of a motion to vacate a conviction or sentence based on a violation of the California Racial Justice Act of 2020*, and the motion or petition 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.

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

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

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

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

18 (2) During the defendant's trial, in court and during the
19 proceedings, the judge, an attorney in the case, a law enforcement
20 officer involved in the case, an expert witness, or juror, used
21 racially discriminatory language about the defendant's race,
22 ethnicity, or national origin, or otherwise exhibited bias or animus
23 towards the defendant because of the defendant's race, ethnicity,
24 or national origin, whether or not purposeful. This paragraph does
25 not apply if the person speaking is relating language used by
26 another that is relevant to the case or if the person speaking is
27 giving a racially neutral and unbiased physical description of the
28 suspect.

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

36 (4) (A) A longer or more severe sentence was imposed on the
37 defendant than was imposed on other similarly situated individuals
38 convicted of the same offense, and longer or more severe sentences
39 were more frequently imposed for that offense on people that share
40 the defendant's race, ethnicity, or national origin than on

1 defendants of other races, ethnicities, or national origins in the
2 county where the sentence was imposed.

3 (B) A longer or more severe sentence was imposed on the
4 defendant than was imposed on other similarly situated individuals
5 convicted of the same offense, and longer or more severe sentences
6 were more frequently imposed for the same offense on defendants
7 in cases with victims of one race, ethnicity, or national origin than
8 in cases with victims of other races, ethnicities, or national origins,
9 in the county where the sentence was imposed.

10 (b) A defendant may file a motion pursuant to this section, or
11 a petition for writ of habeas corpus or a motion under Section
12 1473.7, in a court of competent jurisdiction, alleging a violation
13 of subdivision (a). For claims based on the trial record, a defendant
14 may raise a claim alleging a violation of subdivision (a) on direct
15 appeal from the conviction or sentence. The defendant may also
16 move to stay the appeal and request remand to the superior court
17 to file a motion pursuant to this section. If the motion is based in
18 whole or in part on conduct or statements by the judge, the judge
19 shall disqualify themselves from any further proceedings under
20 this section.

21 (c) If a motion is filed in the trial court and the defendant makes
22 a prima facie showing of a violation of subdivision (a), the trial
23 court shall hold a hearing. A motion made at trial shall be made
24 as soon as practicable upon the defendant learning of the alleged
25 violation. A motion that is not timely may be deemed waived, in
26 the discretion of the court.

27 (1) At the hearing, evidence may be presented by either party,
28 including, but not limited to, statistical evidence, aggregate data,
29 expert testimony, and the sworn testimony of witnesses. The court
30 may also appoint an independent expert. For the purpose of a
31 motion and hearing under this section, out-of-court statements that
32 the court finds trustworthy and reliable, statistical evidence, and
33 aggregated data are admissible for the limited purpose of
34 determining whether a violation of subdivision (a) has occurred.

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

38 (3) If the defendant is represented by an attorney and the motion
39 alleges a violation of paragraph (1) or (2) of subdivision (a), based
40 in whole or in part on the conduct of one or more law enforcement

1 officers, the attorney shall serve a copy of the motion on the law
2 enforcement agency or agencies that employed the officer or
3 officers.

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

6 (d) A defendant may file a motion requesting disclosure to the
7 defense of all evidence relevant to a potential violation of
8 subdivision (a) in the possession or control of the state. A motion
9 filed under this section shall describe the type of records or
10 information the defendant seeks. Upon a showing of good cause,
11 the court shall order the records to be released. Upon a showing
12 of good cause, and in order to protect a privacy right or privilege,
13 the court may permit the prosecution to redact information prior
14 to disclosure or may subject disclosure to a protective order. If a
15 statutory privilege or constitutional privacy right cannot be
16 adequately protected by redaction or a protective order, the court
17 shall not order the release of the records.

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

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

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

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

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

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

39 (B) After a judgment has been entered, if the court finds that
40 only the sentence was sought, obtained, or imposed in violation

1 of subdivision (a), the court shall vacate the sentence, find that it
2 is legally invalid, and impose a new sentence. On resentencing,
3 the court shall not impose a new sentence greater than that
4 previously imposed.

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

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

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

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

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

17 (1) “More frequently sought or obtained” or “more frequently
18 imposed” means that the totality of the evidence demonstrates a
19 significant difference in seeking or obtaining convictions or in
20 imposing sentences comparing individuals who have engaged in
21 similar conduct and are similarly situated, and the prosecution
22 cannot establish race-neutral reasons for the disparity. The evidence
23 may include statistical evidence, aggregate data, or nonstatistical
24 evidence. Statistical significance is a factor the court may consider,
25 but is not necessary to establish a significant difference. In
26 evaluating the totality of the evidence, the court shall consider
27 whether systemic and institutional racial bias, racial profiling, and
28 historical patterns of racially biased policing and prosecution may
29 have contributed to, or caused differences observed in, the data or
30 impacted the availability of data overall. Race-neutral reasons shall
31 be relevant factors to charges, convictions, and sentences that are
32 not influenced by implicit, systemic, or institutional bias based on
33 race, ethnicity, or national origin.

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

39 (3) “Relevant factors,” as that phrase applies to sentencing,
40 means the factors in the California Rules of Court that pertain to

1 sentencing decisions and any additional factors required to or
2 permitted to be considered in sentencing under state law and under
3 the state and federal constitutions.

4 (4) “Racially discriminatory language” means language that, to
5 an objective observer, explicitly or implicitly appeals to racial bias,
6 including, but not limited to, racially charged or racially coded
7 language, language that compares the defendant to an animal, or
8 language that references the defendant’s physical appearance,
9 culture, ethnicity, or national origin. Evidence that particular words
10 or images are used exclusively or disproportionately in cases where
11 the defendant is of a specific race, ethnicity, or national origin is
12 relevant to determining whether language is discriminatory.

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

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

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

26 (j) This section applies as follows:

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

28 (2) Commencing January 1, 2023, to all cases in which, at the
29 time of the filing of a petition pursuant to subdivision (e) of Section
30 1473 raising a claim under this section, the petitioner is sentenced
31 to death or to cases in which the motion is filed pursuant to Section
32 1473.7 because of actual or potential immigration consequences
33 related to the conviction or sentence, regardless of when the
34 judgment or disposition became final.

35 (3) Commencing January 1, 2024, to all cases in which, at the
36 time of the filing of a petition pursuant to subdivision (e) of Section
37 1473 raising a claim under this section, the petitioner is currently
38 serving a sentence in the state prison or in a county jail pursuant
39 to subdivision (h) of Section 1170, or committed to the Division

1 of Juvenile Justice for a juvenile disposition, regardless of when
2 the judgment or disposition became final.

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

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

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

19 *SEC. 3. Section 1473 of the Penal Code is amended to read:*

20 1473. (a) A person unlawfully imprisoned or restrained of
21 their liberty, under any pretense, may prosecute a writ of habeas
22 corpus to inquire into the cause of the imprisonment or restraint.

23 (b) (1) A writ of habeas corpus may be prosecuted for, but not
24 limited to, the following reasons:

25 (A) False evidence that is material on the issue of guilt or
26 punishment was introduced against a person at a hearing or trial
27 relating to the person's incarceration.

28 (B) False physical evidence, believed by a person to be factual,
29 probative, or material on the issue of guilt, which was known by
30 the person at the time of entering a plea of guilty, which was a
31 material factor directly related to the plea of guilty by the person.

32 (C) (i) New evidence exists that is presented without substantial
33 delay, is admissible, and is sufficiently material and credible that
34 it more likely than not would have changed the outcome of the
35 case.

36 (ii) For purposes of this section, "new evidence" means evidence
37 that has not previously been presented and heard at trial and has
38 been discovered after trial.

39 (D) A significant dispute has emerged or further developed in
40 the petitioner's favor regarding expert medical, scientific, or

1 forensic testimony that was introduced at trial or a hearing and
2 that expert testimony more likely than not affected the outcome
3 of the case.

4 (i) For purposes of this section, the expert medical, scientific,
5 or forensic testimony includes the expert's conclusion or the
6 scientific, forensic, or medical facts upon which their opinion is
7 based.

8 (ii) For purposes of this section, the significant dispute may be
9 as to the reliability or validity of the diagnosis, technique, methods,
10 theories, research, or studies upon which a medical, scientific, or
11 forensic expert based their testimony.

12 (iii) Under this section, a significant dispute can be established
13 by credible expert testimony or declaration, or by peer reviewed
14 literature showing that experts in the relevant medical, scientific,
15 or forensic community, substantial in number or expertise, have
16 concluded that developments have occurred that undermine the
17 reliability or validity of the diagnosis, technique, methods, theories,
18 research, or studies upon which a medical, scientific, or forensic
19 expert based their testimony.

20 (iv) In assessing whether a dispute is significant, the court shall
21 give great weight to evidence that a consensus has developed in
22 the relevant medical, scientific, or forensic community undermining
23 the reliability or validity of the diagnosis, technique, methods,
24 theories, research, or studies upon which a medical, scientific, or
25 forensic expert based their testimony or that there is a lack of
26 consensus as to the reliability or validity of the diagnosis,
27 technique, methods, theories, research, or studies upon which a
28 medical, scientific, or forensic expert based their testimony.

29 (v) The significant dispute must have emerged or further
30 developed within the relevant medical, scientific, or forensic
31 community, which includes the scientific community and all fields
32 of scientific knowledge on which those fields or disciplines rely
33 and shall not be limited to practitioners or proponents of a
34 particular scientific or technical field or discipline.

35 (vi) If the petitioner makes a prima facie showing that they are
36 entitled to relief, the court shall issue an order to show cause why
37 relief shall not be granted. To obtain relief, all the elements of this
38 subparagraph must be established by a preponderance of the
39 evidence.

1 (2) For purposes of this subdivision, “false evidence” includes
2 opinions of experts that have either been repudiated by the expert
3 who originally provided the opinion at a hearing or trial or that
4 have been undermined by the state of scientific knowledge or later
5 scientific research or technological advances.

6 (3) Any allegation that the prosecution knew or should have
7 known of the false nature of the evidence is immaterial to the
8 prosecution of a writ of habeas corpus brought under subparagraph
9 (A) or (B) of paragraph (1).

10 (4) This subdivision does not create additional liabilities, beyond
11 those already recognized, for an expert who repudiates the original
12 opinion provided at a hearing or trial or whose opinion has been
13 undermined by scientific research, technological advancements,
14 or because of a reasonable dispute within the expert’s relevant
15 scientific community as to the validity of the methods, theories,
16 research, or studies upon which the expert based their opinion.

17 (c) This section does not change the existing procedures for
18 habeas relief.

19 (d) This section does not limit the grounds for which a writ of
20 habeas corpus may be prosecuted or preclude the use of any other
21 remedies.

22 (e) (1) Notwithstanding any other law, a writ of habeas corpus
23 may also be prosecuted after judgment has been entered based on
24 evidence that a criminal conviction or sentence was sought,
25 obtained, or imposed in violation of subdivision (a) of Section
26 745, if that section applies based on the date of judgment as
27 provided in subdivision (j) of Section 745. A petition raising a
28 claim of this nature for the first time, or on the basis of new
29 discovery provided by the state or other new evidence that could
30 not have been previously known by the petitioner with due
31 diligence, shall not be deemed a successive or abusive petition. If
32 the petitioner has a habeas corpus petition pending in state court,
33 but it has not yet been decided, the petitioner may amend the
34 existing petition with a claim that the petitioner’s conviction or
35 sentence was sought, obtained, or imposed in violation of
36 subdivision (a) of Section 745. The petition shall state if the
37 petitioner requests appointment of counsel and the court shall
38 appoint counsel if the petitioner cannot afford counsel and either
39 the petition alleges facts that would establish a violation of
40 subdivision (a) of Section 745 or the State Public Defender requests

1 counsel be appointed. Newly appointed counsel may amend a
2 petition filed before their appointment. The court shall review a
3 petition raising a claim pursuant to Section 745 and shall determine
4 if the petitioner has made a prima facie showing of entitlement to
5 relief. If the petitioner makes a prima facie showing that the
6 petitioner is entitled to relief, the court shall issue an order to show
7 cause why relief shall not be granted and hold an evidentiary
8 hearing, unless the state declines to show cause. The defendant
9 may appear remotely, and the court may conduct the hearing
10 through the use of remote technology, unless counsel indicates
11 that the defendant's presence in court is needed. If the court
12 determines that the petitioner has not established a prima facie
13 showing of entitlement to relief, the court shall state the factual
14 and legal basis for its conclusion on the record or issue a written
15 order detailing the factual and legal basis for its conclusion.

16 *(2) If the defendant is represented by an attorney and the petition*
17 *alleges a violation of paragraph (1) or (2) of subdivision (a) of*
18 *Section 745, based in whole or in part on the conduct of one or*
19 *more law enforcement officers, the attorney shall serve a copy of*
20 *the motion on the law enforcement agency or agencies that*
21 *employed the officer or officers.*

22 (f) If the court holds an evidentiary hearing and the petitioner
23 is incarcerated in state prison, the petitioner may choose not to
24 appear for the hearing with a signed or oral waiver on record, or
25 they may appear remotely through the use of remote technology,
26 unless counsel indicates that the defendant's presence in court is
27 needed.

28 (g) For purposes of this section, if the district attorney in the
29 county of conviction or the Attorney General concedes or stipulates
30 to a factual or legal basis for habeas relief, there shall be a
31 presumption in favor of granting relief. This presumption may be
32 overcome only if the record before the court contradicts the
33 concession or stipulation or it would lead to the court issuing an
34 order contrary to law.

35 (h) (1) If after the court grants postconviction relief under this
36 section and the prosecuting agency elects to retry the petitioner,
37 the petitioner's postconviction counsel may be appointed as counsel
38 or cocounsel to represent the petitioner on the retrial if both of the
39 following requirements are met:

1 (A) The petitioner and postconviction counsel both agree for
2 postconviction counsel to be appointed.

3 (B) Postconviction counsel is qualified to handle trials.

4 (2) Counsel shall be paid under the applicable pay scale for
5 appointed counsel. Otherwise, the court shall appoint other
6 appropriate counsel.

7 *SEC. 4. Section 1473.7 of the Penal Code is amended to read:*

8 1473.7. (a) A person who is no longer in criminal custody may
9 file a motion to vacate a conviction or sentence for any of the
10 following reasons:

11 (1) The conviction or sentence is legally invalid due to
12 prejudicial error damaging the moving party's ability to
13 meaningfully understand, defend against, or knowingly accept the
14 actual or potential adverse immigration consequences of a
15 conviction or sentence. A finding of legal invalidity may, but need
16 not, include a finding of ineffective assistance of counsel.

17 (2) Newly discovered evidence of actual innocence exists that
18 requires vacation of the conviction or sentence as a matter of law
19 or in the interests of justice.

20 (3) (A) A conviction or sentence was sought, obtained, or
21 imposed on the basis of race, ethnicity, or national origin in
22 violation of subdivision (a) of Section 745.

23 *(B) If the motion alleges a violation of paragraph (1) or (2) of*
24 *subdivision (a) of Section 745, based in whole or in part on the*
25 *conduct of one or more law enforcement officers, the person shall*
26 *serve a copy of the motion on the law enforcement agency or*
27 *agencies that employed the officer or officers.*

28 (b) (1) Except as provided in paragraph (2), a motion pursuant
29 to paragraph (1) of subdivision (a) shall be deemed timely filed at
30 any time in which the individual filing the motion is no longer in
31 criminal custody.

32 (2) A motion pursuant to paragraph (1) of subdivision (a) may
33 be deemed untimely filed if it was not filed with reasonable
34 diligence after the later of the following:

35 (A) The moving party receives a notice to appear in immigration
36 court or other notice from immigration authorities that asserts the
37 conviction or sentence as a basis for removal or the denial of an
38 application for an immigration benefit, lawful status, or
39 naturalization.

1 (B) Notice that a final removal order has been issued against
2 the moving party, based on the existence of the conviction or
3 sentence that the moving party seeks to vacate.

4 (c) A motion pursuant to paragraph (2) or (3) of subdivision (a)
5 shall be filed without undue delay from the date the moving party
6 discovered, or could have discovered with the exercise of due
7 diligence, the evidence that provides a basis for relief under this
8 section or Section 745.

9 (d) All motions shall be entitled to a hearing. Upon the request
10 of the moving party, the court may hold the hearing without the
11 personal presence of the moving party provided that it finds good
12 cause as to why the moving party cannot be present. If the
13 prosecution has no objection to the motion, the court may grant
14 the motion to vacate the conviction or sentence without a hearing.

15 (e) When ruling on the motion:

16 (1) The court shall grant the motion to vacate the conviction or
17 sentence if the moving party establishes, by a preponderance of
18 the evidence, the existence of any of the grounds for relief specified
19 in subdivision (a). For a motion made pursuant to paragraph (1)
20 of subdivision (a), the moving party shall also establish that the
21 conviction or sentence being challenged is currently causing or
22 has the potential to cause removal or the denial of an application
23 for an immigration benefit, lawful status, or naturalization.

24 (2) There is a presumption of legal invalidity for the purposes
25 of paragraph (1) of subdivision (a) if the moving party pleaded
26 guilty or nolo contendere pursuant to a statute that provided that,
27 upon completion of specific requirements, the arrest and conviction
28 shall be deemed never to have occurred, where the moving party
29 complied with these requirements, and where the disposition under
30 the statute has been, or potentially could be, used as a basis for
31 adverse immigration consequences.

32 (3) If the court grants the motion to vacate a conviction or
33 sentence obtained through a plea of guilty or nolo contendere, the
34 court shall allow the moving party to withdraw the plea.

35 (4) When ruling on a motion under paragraph (1) of subdivision
36 (a), the only finding that the court is required to make is whether
37 the conviction is legally invalid due to prejudicial error damaging
38 the moving party's ability to meaningfully understand, defend
39 against, or knowingly accept the actual or potential adverse
40 immigration consequences of a conviction or sentence. When

1 ruling on a motion under paragraph (2) of subdivision (a), the court
2 shall specify the basis for its conclusion.

3 (f) An order granting or denying the motion is appealable under
4 subdivision (b) of Section 1237 as an order after judgment affecting
5 the substantial rights of a party.

6 (g) A court may only issue a specific finding of ineffective
7 assistance of counsel as a result of a motion brought under
8 paragraph (1) of subdivision (a) if the attorney found to be
9 ineffective was given timely advance notice of the motion hearing
10 by the moving party or the prosecutor, pursuant to Section 416.90
11 of the Code of Civil Procedure.

12 ~~SEC. 3.~~

13 *SEC. 5.* Section 13510.8 of the Penal Code is amended to read:

14 13510.8. (a) (1) The commission shall revoke the certification
15 of a certified peace officer if the person is or has become ineligible
16 to hold office as a peace officer pursuant to Section 1029 of the
17 Government Code.

18 (2) The commission may suspend or revoke the certification of
19 a peace officer if the person has been terminated for cause from
20 employment as a peace officer for, or has, while employed as a
21 peace officer, otherwise engaged in, any serious misconduct as
22 described in subdivision (b).

23 (3) The commission may cancel the certificate or proof of
24 eligibility of a peace officer if the commission determines that
25 there was fraud or misrepresentation made by an applicant at any
26 time during the application process that resulted in the issuance
27 of the certification.

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

32 (1) Dishonesty relating to the reporting, investigation, or
33 prosecution of a crime, or relating to the reporting of, or
34 investigation of misconduct by, a peace officer or custodial officer,
35 including, but not limited to, false statements, intentionally filing
36 false reports, tampering with, falsifying, destroying, or concealing
37 evidence, perjury, and tampering with data recorded by a
38 body-worn camera or other recording device for purposes of
39 concealing misconduct.

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

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

6 (4) Sexual assault, as described in subdivision (b) of Section
7 832.7.

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

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

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

39 (8) Failure to cooperate with an investigation into potential
40 police misconduct, including an investigation conducted pursuant

1 to this chapter. For purposes of this paragraph, the lawful exercise
2 of rights granted under the United States Constitution, the
3 California Constitution, or any other law shall not be considered
4 a failure to cooperate.

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

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

15 (2) The division shall promptly review any grounds for
16 decertification described in subdivision (a) received from an
17 agency. The division shall have the authority to review any agency
18 or other investigative authority file, as well as to conduct additional
19 investigation, if necessary. The division shall only have authority
20 to review and investigate allegations for purposes of decertification.

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

27 (B) The commission, in its discretion, may direct the division
28 to review an investigative file. The commission, either upon its
29 own motion or in response to a recommendation from the board,
30 may direct the division to investigate any potential grounds for
31 decertification of a peace officer.

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

35 (4) The division, in carrying out any investigation initiated
36 pursuant to this section or any other duty shall have all of the
37 powers of investigation granted pursuant to Article 2 (commencing
38 with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title
39 2 of the Government Code.

1 (5) Notwithstanding any other law, the investigation shall be
2 completed within three years after the receipt of the completed
3 report of the disciplinary or internal affairs investigation from the
4 employing agency pursuant to Section 13510.9, however, no time
5 limit shall apply if a report of the conduct was not made to the
6 commission. An investigation shall be considered completed upon
7 a notice of intent to deny, suspend, or revoke certification issued
8 pursuant to paragraph (1) of subdivision (a) of Section 13510.85.
9 The time limit shall be tolled during the appeal of a termination
10 or other disciplinary action through an administrative or judicial
11 proceeding or during any criminal prosecution of the peace officer.
12 The commission shall consider the peace officer's prior conduct
13 and service record, and any instances of misconduct, including
14 any incidents occurring beyond the time limitation for investigation
15 in evaluating whether to revoke certification for the incident under
16 investigation.

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

24 (d) Upon arrest or indictment of a peace officer for any crime
25 described in Section 1029 of the Government Code, or discharge
26 from any law enforcement agency for grounds set forth in
27 subdivision (a), or separation from employment of a peace officer
28 during a pending investigation into allegations of serious
29 misconduct, the executive director shall order the immediate
30 temporary suspension of any certificate or proof of eligibility held
31 by that peace officer upon the determination by the executive
32 director that the temporary suspension is in the best interest of the
33 health, safety, or welfare of the public. The order of temporary
34 suspension shall be made in writing and shall specify the basis for
35 the executive director's determination. Following the issuance of
36 a temporary suspension order, proceedings of the commission in
37 the exercise of its authority to discipline any peace officer shall
38 be promptly scheduled as provided for in this section. The
39 temporary suspension shall continue in effect until issuance of the

1 final decision on revocation pursuant to this section or until the
2 order is withdrawn by the executive director.

3 (e) Records of an investigation of any person by the commission
4 shall be retained for 30 years following the date that the
5 investigation is deemed concluded by the commission. The
6 commission may destroy records prior to the expiration of the
7 30-year retention period if the subject is deceased and no action
8 upon the complaint was taken by the commission beyond the
9 commission's initial intake of the complaint.

10 (f) Any peace officer may voluntarily surrender their
11 certification permanently. Voluntary permanent surrender of
12 certification pursuant to this subdivision shall have the same effect
13 as revocation. Voluntary permanent surrender is not the same as
14 placement of a valid certification into inactive status during a
15 period in which a person is not actively employed as a peace
16 officer. A permanently surrendered certification cannot be
17 reactivated.

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

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

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

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

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

33 (2) This subdivision does not prohibit revocation based on the
34 underlying acts or omissions which formed the basis of the action
35 brought pursuant to Section 745, if the revocation otherwise
36 conforms to all the rules and procedures applicable to those
37 proceedings, and the officer is accorded all due process protections
38 provided in those proceedings.

O