POST Decertification Reporting Standards

304.1 PURPOSE

California Senate Bill 2 (SB 2) was signed into law on September 30, 2021, as Government Code 1029.

It has a significant impact on law enforcement agencies throughout the state. The Bill's primary objective is to enhance accountability for misconduct by peace officers, and it accomplishes this by introducing five (5) significant modifications for the law enforcement profession. Although some portion of the law went into effect at the beginning of 2022, the portion with greatest impact went into effect on January 1, 2023 which includes the following:

• Creates a process for the Commission on Peace Officer Standards and Training (POST) to revoke peace officers' certifications such that those individuals will be disqualified from peace officer employment in California;

• Expand the list of circumstances to disqualify a person from employment as a peace officer.

• Requires law enforcement agencies to investigate all complaints or claims of serious misconduct by peace officers regardless of whether the subject officer(s) is/are still employed by the agency.

• Requires law enforcement agencies to report to POST all complaints, claims, allegations, and findings of serious misconduct within 10 days.

• Removes some immunity provisions for peace officers and their employing agencies in civil rights lawsuits brought under the Tom Bane Civil Rights Act (California Civil Code § 52.1.)

304.2 SCOPE

This SOP will outline the duties and responsibilities the San Mateo Police Department has with respect to compliance of Government Code §1029. SB 2 treats peace officers' POST certificates as licenses. As such, these licenses are owned by POST and can be revoked, suspended, temporarily suspended, or voluntarily surrendered by the officer. POST handles this issue through its Peace Officer Standards Accountability Division (POSAD), which has an advisory board that provides oversight. The advisory board can only make recommendations regarding an officer's status and does not have the power to make binding decisions for POSAD. All officer decertifications will be made public. The Bill makes all records related to the revocation of a peace officer's certification public and requires that records of an investigation be retained for 30 years.

304.3 DEFINITIONS AND GUIDELINES

Government Code §1029 specifies that serious misconduct is defined as the following:

1. Dishonesty: Relating to the reporting, investigation, or prosecution of a crime, or relating to the reporting of, or investigation of misconduct by a peace officer or custodial officer. Including, but not limited to false statements, intentionally filing false reports, tampering with, falsifying, destroying, or concealing evidence, perjury, and tampering with data recorded by a body worn camera or other recording device for purposes of concealing misconduct.

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2. Abuse of Power: Including, but not limited to, intimidating witnesses, knowingly obtaining a false confession, or knowingly making a false arrest.

3. Physical Abuse: Excessive or unreasonable force.

4. Sexual assault: Commission or attempted initiation of a sexual act with a member of the public or agency while on-duty with force, threat, coercion, extortion, offer of lenience/other official favor, or under color of authority (propositioning for or commission of any sexual act while on-duty

5. Demonstrating Bias: On the basis of any legally protected status.

6. Egregious or repeated violations of any law inconsistent with a peace officer's duties.

7. Participation in a Law Enforcement Gang: A group of law enforcement offices within a law enforcement agency who may identify themselves by a name and may be associated with an identifying symbol, including, but not limited to matching tattoos, and who engage in a pattern of on-duty behavior that intentionally violates the law or fundamental principles of professional policing.

8. Failure to Cooperate: Failure to cooperate with an investigation into potential police misconduct, including an investigation conducted pursuant to PC 13510.8. The lawful exercise of rights granted under the United States Constitution, the California Constitution, or any other law shall not be considered a failure to cooperate.

9. Failure to Intercede: Failure to intercede when present and observing another officer using force that is clearly beyond that which is necessary. As determined by an objectively reasonable under the circumstances. Taking into account other officers may have additional information regarding the threat posed by a subject.

(b) SB 2 authorizes POST to conduct investigations to determine the fitness of any person to serve as a peace officer in the state of California, and to conduct audits of agencies who employ peace officers. To do so, the Bill establishes a Peace Officer Standards Accountability Division (POSAD) within POST, with the responsibility to review investigations conducted by law enforcement agencies, and to conduct its own investigations into misconduct that could provide grounds for suspension or revocation of a peace officer's certification. This Division will also have the responsibility to make findings and recommendations to the Commission, to conduct administrative proceedings seeking suspension or revocation, and to accept complaints from members of the public or law enforcement agencies.

(c) SB 2 amends Penal Code Section 832.7 (Pitchess statute) to allow disclosure to POST of otherwise confidential peace officer personnel records.

(d) SB 2 directs the Governor to establish a Peace Officers Standards Accountability Board no later than January 1, 2023. The purpose of the Board will be to hear the findings and recommendations from the investigative division and make recommendations on decertification to the POST commission. The Board will consist of nine members serving a three year term, all but two of whom are appointed by the Governor. Of the nine members, six members of the public and the attorney may not be former peace officers.

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The POST Accountability Advisory Board includes:

1. One current or former peace officer with command experience.

2. One current or former peace officer with management experience in internal investigations or disciplinary proceedings of peace officers

3. Two members of the public with experience in police accountability issues working at nonprofit or academic institution.

4. Two members of the public with experience in police accountability issues working in community-based organizations.

5. Two members of the public, with "strong consideration" given to individuals who have been subjected to wrongful use(s) of force by a peace officer, or surviving family members of a person killed by wrongful use(s) of force by a peace officer.

6. One attorney with professional experience involving oversight of police officers.

7. The six members of the public and the attorney may not be former peace officers.

304.4 REQUIREMENTS BY POST

SB 2 requires POST to notify the head of the law enforcement agency under the following circumstances:

1. Any time the Commission launches an investigation into one of the agency's officers (unless doing so would interfere with the investigation).

2. Any time such investigation finds grounds to initiate decertification proceedings.

3. Any time the Commission decides to take action.

4. Any time a hearing results in decertification or suspension.

304.5 ADMINISTRATIVE AND REPORTING REQUIREMENTS FOR THE SAN MATEO POLICE DEPARTMENT

The San Mateo Police Department is required to submit reports to POST any time one of the following occurs within ten (10) days:

1. The agency employs, appoints, terminates, or separates from employment any peace officer, including involuntary terminations, resignations, and retirements.

(a) This specific task is handled through Police Administration through the POST Electronic Data Interchange (POST EDI).

2. A complaint, charge, or allegation of misconduct is made against a peace officer employed by the agency that could result in decertification.

3. A civilian oversight entity or review board, civilian police commission, police chief, or civilian inspector general makes a finding or recommendation that a peace officer employed by the agency engaged in conduct that could result in decertification.

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4. The final disposition of an investigation determines that a peace officer engaged in conduct that could result in decertification, regardless of the discipline imposed (if any).

5. A civil judgment or court finding is made against a peace officer based on conduct that could result in decertification, or a settlement is reached in civil case against a peace officer or the employing agency based on allegations of officer conduct that could result in decertification.

304.6 INVESTIGATIVE AND RECORD KEEPING REQUIREMENT

(a) The San Mateo Police Department is required to complete any investigation into allegations of serious misconduct (conduct that could subject a peace officer to decertification) regardless of the employment status of the officer. Should an officer resign, retire, be released from probationary employment, terminated on unrelated grounds, or separated from employment for any other reason so that no disciplinary action could take place, the department is still required to complete the investigation.

(b) Any time the San Mateo Police Department has reported to POST a complaint, charge or allegation of serious misconduct, the agency must retain the investigation in its entirety for at least five years after making the report. The agency must make these records available for inspection by POST upon request. POST is mandated to retain all investigative files for 30 years following the date the investigation is deemed concluded by the Commission.

304.7 EXPANSION OF DISQUALIFICATION CRITERIA

SB 2 amends Government Code §1029 and will decertify the following individuals from peace officer employment:

1. An individual discharged from the military after adjudication by a military tribunal for committing an offense that would have been a felony if committed in California.

2. An individual convicted of a felony (including by a guilty or nolo contendere plea) will remain disqualified even if a later court vacates/expunges/reverses the conviction unless the court finds that individual to be factually innocent. This includes felony convictions reduced to a misdemeanor.

3. An individual convicted of any one of several specific crimes of dishonesty or misconduct in another jurisdiction that would have constituted one of those crimes if committed in California. This includes, but is not limited to, bribery, corruption, perjury, falsifying evidence, witness tampering, forging/falsifying government records, and tampering with the jury or jury selection process.

4. An individual whose POST certificate was revoked (or denied) or who voluntarily surrendered the certificate.

5. Additionally, the California DOJ is required to submit to POST any disqualifying felony or misdemeanor conviction for all persons known to be current or former peace officers.

304.8 BACKGROUND CHECK REQUIREMENT

(a) If the San Mateo Police Department employs or appoints a peace officer who has previously worked as a peace officer for another agency, SMPD Background Investigator(s) are required to contact POST to inquire as to the facts and reasons the officer was separated from any

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previous employing agency. POST is then required to respond with any relevant information in its possession.

(b) Prior to the appointment of a peace officer at the San Mateo Police Department, Background Investigators assigned to the Support Services Unit shall adhere to Government Code §1029, outlined in 304.8 of this SOP.

304.9 PROCEDURE FOR REPORTING TO POST

(a) The Support Services Unit will be responsible for reporting to POST through its online portal.

(b) The POST Records Management System (POST RMS) is commonly known as "Mark 43" or "POST Portal." Mark 43 is the RMS vendor POST utilizes to service its reporting process.

1. At the time of the creation of this SOP, POST only allows two (2) department employees access to the Mark 43 POST Portal.

2. The authorized users of Mark 43 are the Support Services Lieutenant and Sergeant.

(c) When a formal complaint is generated an email notification will be sent to the most appropriate Command Staff member for triage and will be tracked by the Support Services Administrative Assistant. The disposition of or further investigation required notice of that complaint will be sent to the Support Services Lieutenant for review.

(d) The Support Services Lieutenant and/or Captain are responsible for the review of all instances that could qualify for submission to the Mark 43 POST Portal.

(e) The Support Services Lieutenant, Captain, Chief of Police and City Attorney will make the final decision if a complaint or circumstance meets the criteria listed under 304.3(a) in this SOP.

(f) The Support Services Lieutenant and/or Sergeant will submit all information into the Mark 43 POST Portal

1. The Support Services Lieutenant and/or Sergeant will be responsible for notification to the affected Officer regarding SB 2 Mark 43 POST Portal submission.

2. The notification to the Officer should be contemporaneous with the submission.

(g) The Support Services Lieutenant and/or Sergeant will complete all other necessary updates, including imaged submissions if necessary, to the Mark 43 POST Portal regarding complaint progress and ultimate disposition.

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