

AGENDA ITEM REPORT

Title: REPORT ON PROPOSED AMENDMENT TO COMMISSION REGULATION 1205 - SERIOUS MISCONDUCT

REPORT PROFILE

MEETING DATE 03/07/2024	BUREAU SUBMITTING THE REPORT Certification Bureau	
RESEARCHED BY William "Toby" Darden and Michelle Weiler		REVIEWED BY
REPORT DATE	APPROVED BY Manuel Alvarez, Jr.	DATE APPROVED 02/16/2024
PURPOSE		FINANCIAL IMPACT No

ISSUE, BACKGROUND, ANALYSIS, & RECOMMENDATION

ISSUE: Should the Commission approve the amendment to Commission Regulation 1205 to provide additional clarity regarding biased conduct?

BACKGROUND: On September 30, 2021, Governor Newsom signed Senate Bill (SB) 2. SB 2 made significant changes to the existing Government and Penal Codes, respectively. These changes provide for additional peace officer hiring eligibility requirements. SB 2 also grants the Commission on Peace Officer Standards and Training (POST) the authority to certify all peace officers in California, and subsequently take action against those certifications, should POST determine serious misconduct occurred. On January 1, 2023, Commission Regulation 1205 – Serious Misconduct was adopted and became effective.

After further review of Penal Code section (PC §) 13510.8 and Commission Regulation 1205, it was determined there needs to be further clarification in regulation to define what it means for a peace officer to have “demonstrated bias.”

ANALYSIS: After review of bias related cases submitted to POSAD throughout the last year, and a further review of Penal Code section (PC §) 13510.8 and Commission Regulation 1205, it was determined there needs to be additional regulatory language to define what it means for a peace officer to have “demonstrated bias.”

It is necessary to amend Commission Regulation 1205 to adopt subsection (a)(5)(A)-(B) to establish what acts or actions constitute “demonstrating” bias for the purposes of Penal Code section 13510.8(b)(5). The Peace Officer Standards Accountability Division (division) is charged with establishing clear and convincing evidence that a peace officer has committed one of the nine acts of serious misconduct pursuant to PC§ 13510.8(b) and Commission Regulation 1205, and to report such findings and evidence to the Peace Officer Standards Accountability Advisory Board (Board) and Commission. PC§ 13510.8(b) requires the Commission to adopt a definition of “serious misconduct” that minimally includes the language specified in PC§ 13510.8(b)(1)-(9), however the Commission did expand upon the definition in PC§ 13510.8(b)(5), demonstrating bias to clarify what acts or actions constitute “demonstrating” bias. Absent further clarification to the statutory definition of “demonstrating bias” in Commission Regulation 1205, the division faces considerable challenges in establishing that the acts or actions by a peace officer are, in fact, a demonstration of bias as opposed to personal and otherwise speech protected under the First Amendment.

The additional regulatory language will provide clarity to the regulated and general public as to how the division, the board, and the Commission will investigate, evaluate, and establish findings regarding allegations of demonstrating bias. Accordingly, the amendment makes clear that words, actions, or conduct demonstrating prejudice, intolerance, contempt, or hatred towards a person because of their membership in a class of persons protected by PC§ 13510.8(b)(5) is impermissible when it would lead a reasonable person to conclude that the officer has not or will not fairly and impartially perform their law enforcement duties. This amendment does not narrow the definition of demonstrating bias but rather, provides a framework by which the division, board, and Commission may assess the conduct of the peace officer(s) and satisfy the evidentiary standard as set forth in PC§ 13510.85(a)(4)-(5).

The specific benefits anticipated by the proposed regulatory adoptions will establish the factors the board and Commission shall consider in determining whether an act of demonstrating bias occurred. Additionally, the proposed regulatory changes will increase the effectiveness of POST in enforcing acceptable conduct amongst California peace officers in furtherance of POST’s responsibility to protect the health, safety, and welfare of the general public.

No public comments were received during the 45-day public

comment period.

RECOMMENDATION:

After review bias related cases submitted to POSAD throughout the last year and a further review of Penal Code section (PC §) 13510.8 and Commission Regulation 1205, it was determined there needs to be additional regulatory language define what it means for a peace officer to be “demonstrating bias.” POST staff recommends the Commission amend Commission Regulation 1205 as described in the staff report.

If the Commission concurs, the appropriate action would be a **MOTION** to approve the recommended changes to Commission Regulation 1205 to provide additional clarity regarding biased conduct.

ATTACHMENT(S):

[TPRA_1205_Rev_1223.pdf](#)