



## **JOINT MEETING OF POST COMMISSION AND PEACE OFFICER STANDARDS ACCOUNTABILITY ADVISORY BOARD MEETING**

**February 13, 2024  
AGENDA  
9:00 AM**

The Commission on Peace Officer Standards and Training (Commission) and the Peace Officer Standards Accountability Advisory Board (Board) operates under the requirements set forth by the Bagley-Keene Open Meeting Act (Bagley-Keene) under Government Code sections 11120 through 11132. Bagley-Keene generally requires that the Board publicly notice meetings, prepare agendas, allow public participation, and conduct meetings in a location accessible to public members unless specifically authorized by Bagley-Keene to meet in closed session.

Public comment will be limited in time at the discretion of the Assistant Executive Director. The public comment period preceding items on the agenda will allow members of the public to comment on items not on the agenda but must be within the Commission and Board's jurisdiction. Members of the public who wish to participate during public comment may do so in person by attending the meeting, or by submitting a written public comment submission no later than three days before the meeting date. Written public comments will be published on the Commission on POST's website under the Public Comment section under the corresponding meeting date. Written public comments can be submitted via email to [posadpc@post.ca.gov](mailto:posadpc@post.ca.gov).

The Commission and Board cannot act on or deliberate on items not on the agenda, but only to the extent necessary to determine whether they should be made an agenda item at a future meeting, respond briefly to statements or questions posed during public comment, request clarification, or refer the item to staff. Agenda items may be taken out of order and action (e.g., voting) may be taken on any agenda item.

Persons requesting disability-related accommodations or modifications may do so by contacting POST at (916) 227-3909 (voice), [posadpc@post.ca.gov](mailto:posadpc@post.ca.gov) (email), or Speech-to-Speech users may dial 7-1-1 for the California Relay Service to request special accommodations. Please note: This meeting and all public meetings will be recorded.

No weapons are allowed on the premises during public meetings. Upon entering POST's facility, you are subject to a weapons screening and will be denied entry if you possess any weapon. POST's Executive Director retains the discretion to grant exceptions for duly-authorized individuals, such as on or off-duty law enforcement officers who are not the subject of a POST administrative investigation, suspension, or decertification action.

**I. CALL TO ORDER AND WELCOME**

**II. ROLL CALL OF COMMISSIONERS AND POSAAB MEMBERS**

Commissioners:

Alan Barcelona

Ingrid Braun

Rick Braziel - Vice Chair

Jim Cooper

P. Lamont Ewell

Kelly Gordon

Geoff Long - Chair

Shannan Moon

Tina Nieto

Michelle Rodriguez

Board Members:

Elizabeth T. Buchen - Senate Rules Appointee - Public Member

Dr. Nicole Clavo Psy.D - Governor Appointee - Public Member

Regina Hatcher-Crawford - Governor Appointee - Public Member

Robert Doyle - Governor Appointee - Former Command Rank Peace Officer

Joyce E. Dudley - Chair - Governor Appointee - Attorney

Professor Jack Glaser - Governor Appointee - Public Member

Cephus Johnson - Governor Appointee - Public Member

Lieutenant Charles Lara - Governor Appointee - Management Rank Peace Officer

Margaret Pena - Speaker of Assembly Appointee - Public Member

**III. PUBLIC COMMENT**

The Assistant Executive Director will advise the audience of the following:

This is the time on the agenda for public comment. This time is set aside for members of the public to comment on either items on the agenda or issues not on the agenda but pertaining to Commission or Board business. Members of the public who wish to speak are asked to limit their remarks to no more than five minutes each. Please be advised action cannot be taken on items not on the agenda.

**IV. EXECUTIVE DIRECTOR COMMENTS**

POST Executive Director, Manny Alvarez, will address the Commission and the Board.

**V. COMMISSION AND BOARD TRAINING**

[Joint Training Session of the POST Commission and POSAAB](#)

Members of the Commission and the Board are meeting to receive training regarding the process for review and investigation of reports of peace officer serious misconduct, the administrative proceedings before the Board and Commission, and a review of use of force by peace officers. A question and answer session will then follow.

## **VI. FUTURE MEETING DATES**

### Peace Officer Standards Accountability Advisory Board:

- March 21, 2024 - POST, West Sacramento, CA
- May 15-16, 2024 - POST, West Sacramento, CA
- July 24-25, 2024 - POST, West Sacramento, CA

### POST Commission:

- March 6-7, 2024 - Los Angeles, CA
- June 12-13, 2024 - West Sacramento, CA
- September 12, 2024 - Location TBD
- November 20-21, 2024 - West Sacramento, CA

## **VII. ADJOURNMENT**

## AGENDA ITEM REPORT

Title: JOINT TRAINING SESSION OF THE POST COMMISSION AND POSAAB&NBSP;

### REPORT PROFILE

<b>MEETING DATE</b> 02/13/2024	<b>BUREAU SUBMITTING THE REPORT</b> Peace Officer Standards Accountability Division	
<b>RESEARCHED BY</b> Division Personnel		<b>REVIEWED BY</b> Annemarie Del Mugnaio
<b>REPORT DATE</b> 02/02/2024	<b>APPROVED BY</b> Annemarie Del Mugnaio	<b>DATE APPROVED</b> 02/02/2024
<b>PURPOSE</b>		<b>FINANCIAL IMPACT</b> No

### ISSUE, BACKGROUND, ANALYSIS, & RECOMMENDATION

**ISSUE:**

**BACKGROUND:**

**ANALYSIS:**

**RECOMMENDATION:** Members of the Commission and the Board are meeting to receive training regarding the process for review and investigation of reports of peace officer serious misconduct, the administrative proceedings before the Board and Commission, and a review of use of force by peace officers. A question and answer session will then follow.

**ATTACHMENT(S):**

[February 13 2024 Commission and POSAAB Training PowerPoint - Final Public Copy.pdf](#)



February 13, 2024

# Peace Officer Standards and Training Commission and Accountability Advisory Board Decertification Training



# Welcome and Introductions

# What to Expect During Today's Session

- Review of Acts of Serious Misconduct
- Procedural Overview of Complaint/Report Intake/Investigation
- Administrative Proceedings:
  - Peace Officer Standards Accountability Advisory Board (POSAAB)
  - Commission
  - Office of Administrative Hearings
  - Final Commission Decision
- Evidence – What is the Threshold for Clear & Convincing?
- Open Meetings Act Provisions
- Conflicts of Interest

# Introductions



POST ASSISTANT  
EXECUTIVE  
DIRECTOR



POSAD BUREAU  
CHIEFS



POST EXECUTIVE  
OFFICE



OFFICE OF PUBLIC  
AFFAIRS



# POST Commissioners



**Geoff Long**

Commission Chair  
Public Member



**Rick Braziel**

Commission Vice Chair  
Educator, Humboldt State  
University



**Rob Bonta**

Attorney General, Department of  
Justice



**Alan Barcelona**

Special Agent, Department of  
Justice



**P. Lamont Ewell**

Public Member, Senate Pro  
Tempore Appointed



**Jim Cooper**

Sheriff, Sacramento County



**Kelly Gordon**

Chief, Santa Barbara Police  
Department



**Ingrid Braun**

Sheriff, Mono County



**Tina Nieto**

Sheriff, Monterey County



**Michelle Rodriguez**

Public Member, Speaker of the  
Assembly



**Shannan Moon**

Sheriff-Coroner, Nevada County

# POSAAB Members



**Joyce Dudley**

Board Chair

Attorney – Experience  
involving oversight of  
peace officers

\* Appointed by the  
Governor



**Robert Doyle**

Command-Level Officer

\* Appointed by the  
Governor



**Nicole Clavo**

Member from the public in a  
community-based  
organizations (Police  
Accountability)

\* Appointed by the Governor



**Margaret Pena**

Nonprofit or Academic  
Experience (Police  
Accountability)

\* Appointed by the Speaker  
of Assembly



**Jack Glaser**

Nonprofit or Academic  
Experience (Police  
Accountability)

\* Appointed by the Governor

# POSAAB Members



No Image  
Available

Elizabeth  
Buchen

Member from the public in  
a community-based  
organization (Police  
Accountability)

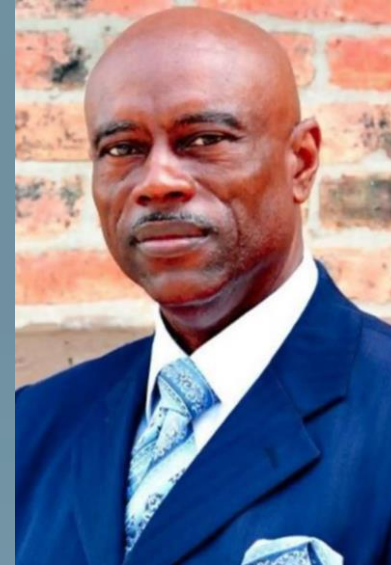
\* Appointed by the  
Senate Rules Committee.



Charles Lara

Management-Level Officer  
with internal affairs  
experience

\* Appointed by the Governor



Cephus  
Johnson

Public Member – Individuals  
who have been subject to  
wrongful use of force or  
surviving family members

\* Appointed by the Governor



No Image  
Available

Regina  
Hatcher-  
Crawford

Public Member – Individuals  
who have been subject to  
wrongful use of force or  
surviving family members

\* Appointed by the Governor

# Organizational Structure



# Peace Officer Standards Accountability Division







# Serious Misconduct

# Serious Misconduct

Dishonesty

Abuse of Power

Physical Abuse

Sexual Assault

Demonstrating Bias

Acts that Violate the Law that are Sufficiently  
Egregious or Repeated

Participation in a Law Enforcement Gang

Failure to Cooperate with an Investigation into  
Potential Police Misconduct

Failure to Intercede

# 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
- Tampering with data recorded by a body-worn camera or other recording device for purposes of concealing misconduct



# Dishonesty

- For purposes of this subsection, in considering whether a suspension or revocation of certification is proper, the Commission will consider the extent to which the dishonesty related to a material or significant fact in the context of the statement or omission alleged to be dishonest, and will also consider whether the dishonesty appears to have been done willfully or intentionally, with the intent to deceive.
- Areas not a fit in the definition:
  - Dishonesty to supervisor
  - Dishonesty during off-duty incident
  - Neglect of duty / Failure to act

# Abuse of Power

Including, but not limited to:

- Intimidating witnesses
- Knowingly obtaining a false confession
- Knowingly making a false arrest

# Physical Abuse

Including, but not limited to, the  
excessive or unreasonable use of force

# Sexual Assault

Commission or attempted initiation of a sexual act with a member of the public or members of the agency.

On Duty:

- Force
- Threat
- Coercion
- Extortion
- Offer of Leniency/Other Official Favor
- Under Color of Authority

Propositioning for or commission of any sexual act while on duty.

Challenging areas:

- Contact with public on-duty, but propositioning occurs off-duty
- Rank differential

# Demonstrating Bias

Demonstrating bias on the basis of actual or perceived:

- Race
- National Origin
- Religion
- Gender Identity or Expression
- Housing Status
- Sexual Orientation
- Mental or Physical Disability
- Other Protected Status in Violation of Law or Department Policy
- Inconsistent with a Peace Officer's Obligation to Carry out their Duties in a Fair and Unbiased Manner

## Added to definition in Regulation 1205

# Demonstrating Bias

- A. An officer is “demonstrating” bias for purposes of this Regulation when the officer either shows or displays, by words, actions or other conduct, prejudice, intolerance, contempt, or hatred towards one or more persons due to that person’s membership within a class of persons identified in Penal Code section 13510.8(b)(5), when such words, actions or other conduct would lead a reasonable person to conclude that the officer has not fairly and impartially performed, or will not fairly and impartially perform, his or her law enforcement duties.
- B. An officer engaging in racial profiling in violation of Penal Code section 13519.4 is demonstrating bias because profiling casts suspicion on a class of people without individualized suspicion as to the person being stopped.

### Challenging area(s):

- Distinguishing between EEOC cases and serious misconduct cases

# Acts that Violate the Law

- Acts that violate the law and are sufficiently egregious or repeated
- Inconsistent with a peace officer's obligation to uphold the law or respect the rights of members of the public
- Challenging areas:
  - Sufficiently egregious
    - Considerations
    - Consistency among agencies

# Participate in a Law Enforcement Gang

A group of law enforcement officers 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.



# Failure to Cooperate

Failure to cooperate with an investigation into potential police misconduct, including an investigation conducted pursuant to Penal Code section 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

## Challenging areas:

- Applicable when officer resigns prior to IA interview?
- Applicable when an attorney instructs the officer not to answer questions without any apparent legal basis?

# 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 officer under the circumstances
- Taking into account other officers may have additional information regarding the threat posed by a subject

# Actionable vs Non-Actionable Cases

By July 1, 2023 !

Retroactive Reporting (Jan. 1, 2023)

January 1, 2020

December 31, 2021

**POST CANNOT TAKE ACTION\***

Abuse of Power

Physical Abuse

Bias

Acts that violate law

LE Gang

Fail to Cooperate

Fail to Intercede

Any finding or recommendation by a civilian oversight entity

Any civil judgment or court finding or settlement of civil claim

**POST CAN TAKE ACTION**

Dishonesty

Sexual Assault

Deadly force that results in SBI or death

\* Relevant to misconduct category

January 1, 2022

**POST CAN TAKE ACTION**

Dishonesty

Abuse of Power

Physical Abuse

Sexual Assault

LE Gang

Bias

Acts that violate law

Fail to Cooperate

Fail to Intercede

Any finding or recommendation by a civilian oversight entity

Any civil judgment or court finding or settlement of civil claim

\*Can take action if case is completed after Jan 1, 2022

# Future Legislative Fixes?

## Closing the Gap

### Development of Disciplinary Guidelines

- Provide guidance for Board/Commission on the imposed discipline and include ranges dependent upon aggravating and mitigating factors

### Immediate Temporary Suspensions- Jurisdiction

- Resignation after the conclusion of the IA
- No technical arrest or indictment for a felony, but a felony complaint or information is filed

### Other Serious Misconduct Categories

- Failure to Act
- Expansion of Dishonesty
- Mental Health Considerations and Risk to the Public

## Future Legislative Fixes?

## Closing the Gap, continued

Confusion for some agencies regarding their obligations under Penal Code section 13510.9:

- Failing to completely disclose investigatory materials based on claims of confidentiality

Future  
Legislative  
Fixes?

Closing the  
Gap,  
continued

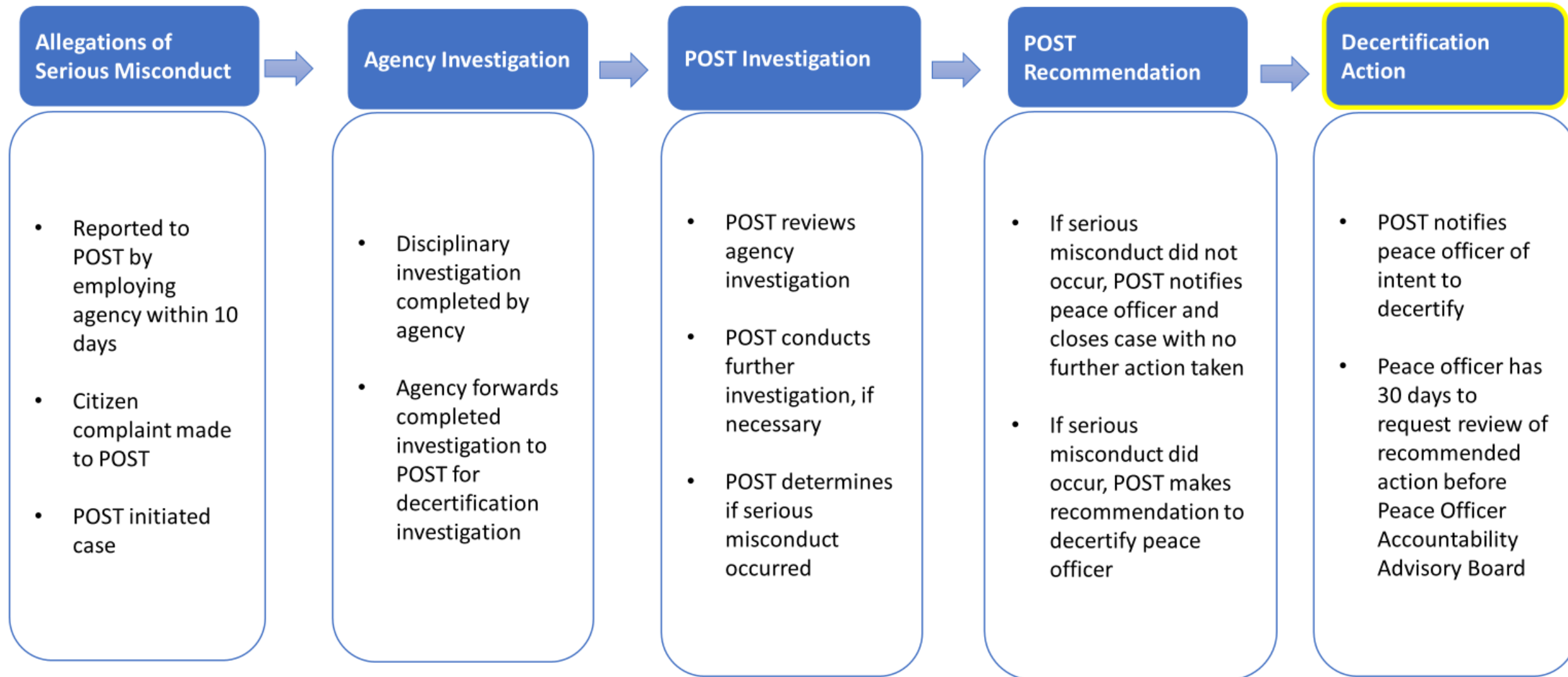
Application of POST Regulations to  
non-participating SB 2 category  
officers:

- Universal Licensure – expand oversight to all peace officer categories regardless of setting and limited scope of responsibility

# Current Statistics

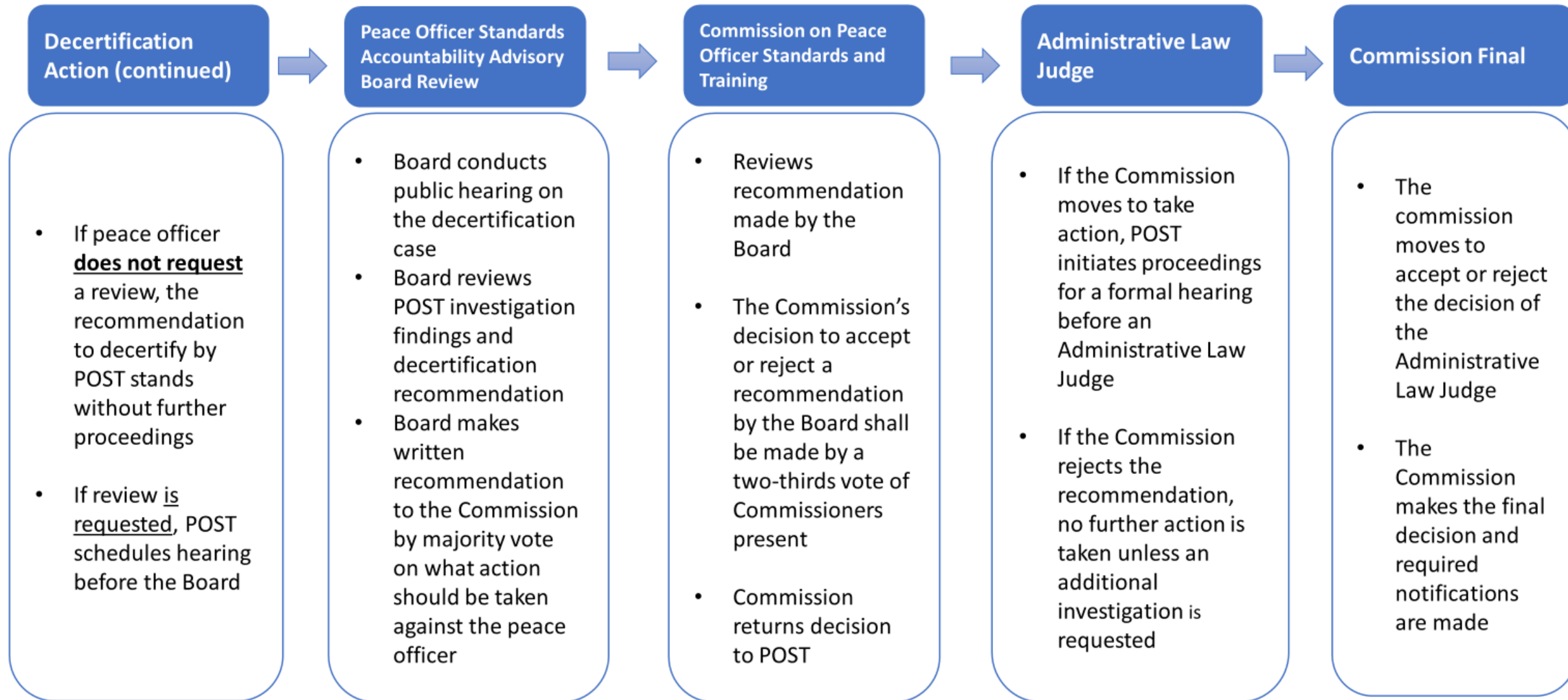
- # of Agency Misconduct Reports: 22,729
- # of Public Complaints: 515
- Total Cases: 15,624
- # of Open Cases: 10,327 (66% of total cases are currently open)
  - Open w/POST: 5,588 (54% of open cases are currently being reviewed by POST)
  - Open w/Agency: 4,739 (46% of open cases are currently being reviewed by the agency)
- # of Closed Cases: 5,297 (34% of total cases have been closed)
- Top 3 Allegations/Charges
  - 1205(a)(3) - Physical abuse/Excessive or Unreasonable Use of Force (10,091 allegations)
  - 1205(a)(5) - Demonstrating Bias (6,939 allegations)
  - 1205(a)(2) - Abuse of Power (3,068 allegations)

# Decertification Process





# Decertification Process cont...



# Who is Conducting the Investigations?

- POST Law Enforcement Consultants (LEC)
  - All prior law enforcement
  - Most average 20+ years of experience
  - Prior Internal Affairs and/or Criminal Investigation experience
  - Come from City, County, State, and Federal agencies



# Overview of Decertification Process

## Keep in mind there are multiple stages in the process and the Board/Commission's role differs at each stage:

- Stage 1 – The initial hearings before the Board and Commission to decide if a case should move forward to a full due process hearing (Penal Code sections 13510.85(A)(4) and (5)).
- Stage 2 – The evidentiary hearing before an administrative law judge (ALJ) at the Office of Administrative Hearings (Penal Code section 13510.85(A)(6) and the Administrative Procedures Act (Government Code section 11500, et seq.)).
- Stage 3 – The Commission's review of the proposed decision by the ALJ and decision as to adoption, non-adoption, or modification of the proposed decision (Government Code section 11517(c)).

# STAGE 1 PROCEEDINGS: WHAT ARE THEY?

- An opportunity to receive the Division's findings of its investigation

and

- To decide whether or not it is a case that should move forward for a full hearing before an Administrative Law Judge who will hear all the evidence, consider legal and factual arguments, and render a proposed decision

## WHAT IS THE STATUTORY BASIS FOR THE *BOARD'S* DUTIES AT STAGE 1?

Under Penal Code section 13510.85(a)(4), the Board:

- “....shall review the findings of investigations presented by the division pursuant to paragraph (1) and shall make a recommendation on what action should be taken on the certification of the peace officer involved. The Board shall only recommend revocation if the factual basis for revocation is established by clear and convincing evidence. If the Board determines that the facts and circumstances revealed by the investigation warrant a sanction other than revocation, it may recommend that a peace officer's certification be suspended for a period of time. The Board shall issue a written decision explaining its reasons for decertification or suspension.”



## AT STAGE 1:

TRY TO MAKE NO  
JUDGMENTS AS  
TO THE MERITS  
OF THE CASE OR  
THE ULTIMATE  
DISCIPLINE TO  
BE IMPOSED

- The Board and Commission make no judgments at this stage as to whether *the misconduct in fact occurred or if discipline should be imposed*.
  - The Board and Commission do not hear from witnesses or decide disputed facts.
  - The officer does not put on their defense here.
  - The officer does not provide evidence, additional facts, or legal briefings here.
- Under Regulation 1209, the officer (or their representative) may, during public comment, address the question of whether the Division's findings, if true, are sufficient to establish serious misconduct under Penal Code section 13510.8(b) and Regulation 1205. A reasonable timeframe may be set to hear public comment.
- The Commission may consider mitigation evidence under Regulation 1213 if that evidence is apparent from the facts set forth in the Division's findings.

## WHAT IS THE STATUTORY BASIS FOR THE COMMISSION'S DUTIES AT STAGE 1?

Under Penal Code section 13510.85(a)(5), the Commission:

- “...shall review all recommendations made by the Board. The Commission’s *decision to adopt a recommendation by the Board* to seek revocation shall require a two-thirds vote of Commissioners present and shall be based on whether the record, in *its entirety*, supports the Board’s conclusion that serious misconduct has been established by clear and convincing evidence. In any case in which the Commission reaches a different determination than the Board’s recommendation, it shall set forth its analysis and reasons for reaching a different determination in writing.” (emphasis added)



# AT STAGE 1: WHAT DETERMINATIONS ARE THE BOARD MAKING?

The Board's determination:

- Based upon the information presented by the division, if the division's allegations are proven at a later hearing, and without more, is it highly probable that serious misconduct (as defined by law and regulation) occurred and if so, what kind of discipline (suspension or revocation) is recommended?
- A majority vote in favor moves the recommendation to the Commission.

## AT STAGE 1:

## WHAT DETERMINATIONS ARE THE COMMISSION MAKING?

### The Commission's Determination:

- Did the record before the Board establish that it is the kind of case that falls within a serious misconduct category, and, was sufficient evidence found by the division (clear and convincing) such that the case should move forward to a full evidentiary hearing to determine the full facts and consider whether discipline should be imposed?

### Further Action:

- If so, the Commission returns any decision requiring action against an individual “to the division, which shall initiate *proceedings for a formal hearing before an administrative law judge in accordance with the Administrative Procedure Act . . .* which shall be subject to judicial review as set forth in that Act” (Penal Code section 13510.85(a)(6)). (emphasis added)

# STAGE 1: WHAT DOCUMENTS WILL YOU SEE?

- This is only a *charging decision* phase: Based upon the *division's* review of the full investigative report and any follow-up, should the matter be sent out for a full evidentiary hearing:
  - The division will include in the ISF all information relevant to the charging decision
  - The ALJ's decision *at Stage 2* will be made on a complete record, including all evidence the officer may present at such a hearing in his or her defense
- Limitation on what documentation can be publicly shared at Stage 1:
  - Statutory limitations on early disclosure
  - PRA implications of early disclosure
  - Due process limits on what can be shared until Stage 3: Fundamental fairness requires that the Commissioners (as the ultimate judges) suspend judgment until a complete record has been presented to the ALJ and the Commission has received a proposed decision

# What do the Board Hearings Look Like?

- Law Enforcement Consultant presents case facts and recommendation
  - Board may ask questions
- Public Comment
  - Public may comment
  - The officer or officer's representative may comment
  - Board may ask questions
- Comment and questions should be limited to the issue of whether or not the division's facts, as found by the division, make it highly probable that serious misconduct in violation of law occurred. Other defenses, arguments, and claims may be made at the Stage 2 evidentiary hearing.

# Board Hearing, continued

- The Board may go into closed session to deliberate and/or to view confidential material that cannot be shared publicly.
- Following closed session, the Board reconvenes to decide what recommendation will be made to the Commission.
  - Keep in mind that, at the discretion of the Chair, Board members may propose alternative motions before voting is held, with each motion voted upon in the order in which they were made.
  - An Order will be signed by the Chair.

# What do the Commission Hearings Look Like?

- This is not a re-do of the Board hearing: The Commission is required to review the record of what happened at the Board to determine if clear and convincing evidence supports a recommendation to revoke.
- The Commission will be given the record of the proceedings before the Board:
  - The Board agenda and attachments
  - A transcript of the proceedings before the Board
  - Your attorney will advise you, in closed session, of any relevant closed session details from the Board hearing
  - The Board's Recommendation Order

# The Commission Hearing, continued

- Law Enforcement Consultant will guide the Commission through the Board proceeding as set forth in the materials.
  - Commission may ask questions
- Public Comment
  - Public may comment
  - The officer or officer's representative may comment
  - Commission may ask questions
- Comment and questions should be limited to the issue of whether or not the record before the Board, in its entirety, supports the Board's conclusion that serious misconduct had been established by clear and convincing evidence.
- Other defenses, arguments, and claims may be made at the Stage 2 evidentiary hearing.

# The Commission Hearing, continued

- The Commission may go into closed session to deliberate and/or to view any confidential material reviewed by the Board that cannot be shared publicly.
- Following closed session, the Commission reconvenes to make a determination.
  - Keep in mind that, at the discretion of the Chair, Commissioners may propose alternative motions before voting is held, with each motion voted upon in the order in which they were made.
  - 2/3 vote required on any order to adopt a revocation recommendation.
  - An Order will be signed by the Chair.



## STAGE 2:

### THE EVIDENTIARY HEARING *BEFORE* AN ADMINISTRATIVE LAW JUDGE (ALJ)

- The Division, in conjunction with legal counsel, will prepare a legal document called an “Accusation,” which starts the hearing process before an ALJ for a Suspension or Revocation of Certification.
  - A Statement of Issues starts the process if a Certification Request is Denied.
- The Attorney General will ordinarily handle these hearings based on the requirements of Cal. Government Code section 11042.
- They will be scheduled to occur before the Office of Administrative Hearings in the same geographical area where the officer was employed.

# STAGE 2:

## THE EVIDENTIARY HEARING *BEFORE AN ALJ,* continued

The hearing proceeds in a manner similar to a civil trial, with some differences:

- No jury
- Right to call and examine/impeach witnesses
- Evidence and arguments can be presented
- Admissibility of evidence is similar to a civil trial, but with some important differences:
  - Evidence is relevant and “shall be admitted if it is the sort of evidence on which responsible persons are accustomed to relying in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions” (Cal. Government Code section 115130)
  - Some hearsay evidence may be admissible if it supplements or explains other admissible evidence
  - Affidavits in lieu of live testimony may be used in certain instances
  - The hearing is not done during a Commission meeting; Commissioners are not present

## STAGE 2: THE PROPOSED DECISION

- After the hearing, the ALJ will prepare a proposed decision within 30 days and POST may file the proposed decision as a public record and serve it on the officer within 30 days of receipt. However, service and filing of the proposed decision is *not* an adoption by the Commission of the proposed decision (Cal. Government Code section 11517(c)(1)).

# STAGE 3 – ADOPT, MODIFY, OR NON-ADOPT THE PROPOSED DECISION (Government Code section 11517)

- The Commission will consider proposed decisions in closed sessions:
  - The officer has no right to file an opposition or object to a proposed decision by an ALJ
- Commission options when reviewing proposed decisions:
  - Within 100 days, may:
    - (A) Adopt
    - (B) Reduce or otherwise mitigate the proposed penalty and adopt the balance of the proposed decision
    - (C) Make technical or other minor changes in the proposed decision and adopt
    - (D) Reject and refer the case back to OAH to take additional evidence and a revised proposed decision
    - (E) Reject the proposed decision and decide the case upon the record

## STAGE 3 – ADOPT, MODIFY, OR NON-ADOPT THE PROPOSED DECISION, continued:

- The Commission's decision shall be filed immediately by the agency as a public record and a copy shall be served by the agency on each party and their attorney.



**FINAL DECISION**

POST's responsibilities once a final determination is made

- POST Profile – Immediately upon notice to the officer

## Profile Report for: HOUSTON, MATT

Certification Status: **Ineligible**

Name: HOUSTON, MATT

[New Appointment](#) [Separation](#)

Birth Date: 01/01/1950

POST ID: C06-D74

Gender: Male

Agency: TEST AGENCY

Race/Ethnicity: White

AKA: NO ALTERNATE NAMES ON FILE

### Certificates

[<< Agency Roster Report](#) [Print Report](#) [View PDF](#)

Cert	Type	Awarded	Edu	T	T+	Comments
234	B	02/02/1982	60	35	15	Invalid

Total Number of Certificates: 1

### Employment

This person is ineligible to be a peace officer in California pursuant to government code section 1029(a).

## Profile Report for: CONNER, SARAH

Certification Status: **Temporary Suspension**

Name: CONNER, SARAH

[Transactions](#)

Birth Date: 04/01/1968

POST ID: C05-Z98

Gender: Female

Agency: TEST AGENCY

Race/Ethnicity: White

AKA: CONNER, SARA

### Certificates

[<< Close Tab](#) [Print Report](#) [View PDF](#)

Cert	Type	Awarded	Edu	T	T+	Comments
191437	B	07/31/2018		0	0	Invalid
147756	I	08/04/2021		0	0	Invalid



## Profile Report for: SIPOWITCZ, ANDREW E

Certification Status: **Surrendered**

Name: SIPOWITCZ, ANDREW E

[New Appointment](#)

[Separation](#)

Birth Date: 03/04/1947

POST ID: C06-E95

Gender: Male

Agency: TEST AGENCY III

Race/Ethnicity: White

AKA: ANDY

### Certificates

[<< EDI Search](#)

[Print Report](#)

[View PDF](#)

Cert	Type	Awarded	Edu	T	T+	Comments
8229	SB	10/01/1980	60	35	10	Invalid

Total Number of Certificates: 1

## Profile Report for: TESTING, JASON

Certification Status: **Revoked**

Name: TESTING, JASON

[New Appointment](#)

[Separation](#)

Birth Date: 06/05/1966

POST ID: A05-Z24

Gender: Male

Agency: TEST AGENCY III

Race/Ethnicity: White

AKA: NO ALTERNATE NAMES ON FILE

### Certificates

[<< EDI Search](#)

[Print Report](#)

[View PDF](#)


No Certificates Issued.

### Proof of Eligibility

POE	Agency Name	Agency	Issued	Status
P0015446	TEST AGENCY III	33333	12/01/2022	Invalid



- Peace Officer Certification Actions List – one week after the POST Profile is updated
- National Decertification Index (NDI) – one week after the POST Profile is updated
  - Access limited to law enforcement agency personnel only
  - ITS will not be reported to the NDI

State of California

Commission on Peace Officer Standards and Training

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## Peace Officer Certification Actions

The commission shall publish the names of any peace officer whose certification is suspended or revoked and the basis for the suspension or revocation.

\*"Last Employing Agency" is not necessarily the reporting agency or the agency where the serious misconduct occurred.

\*\*List is updated weekly on Monday mornings. Holidays may delay the weekly update. The last updated date can be found in the footer (bottom) of the webpage.

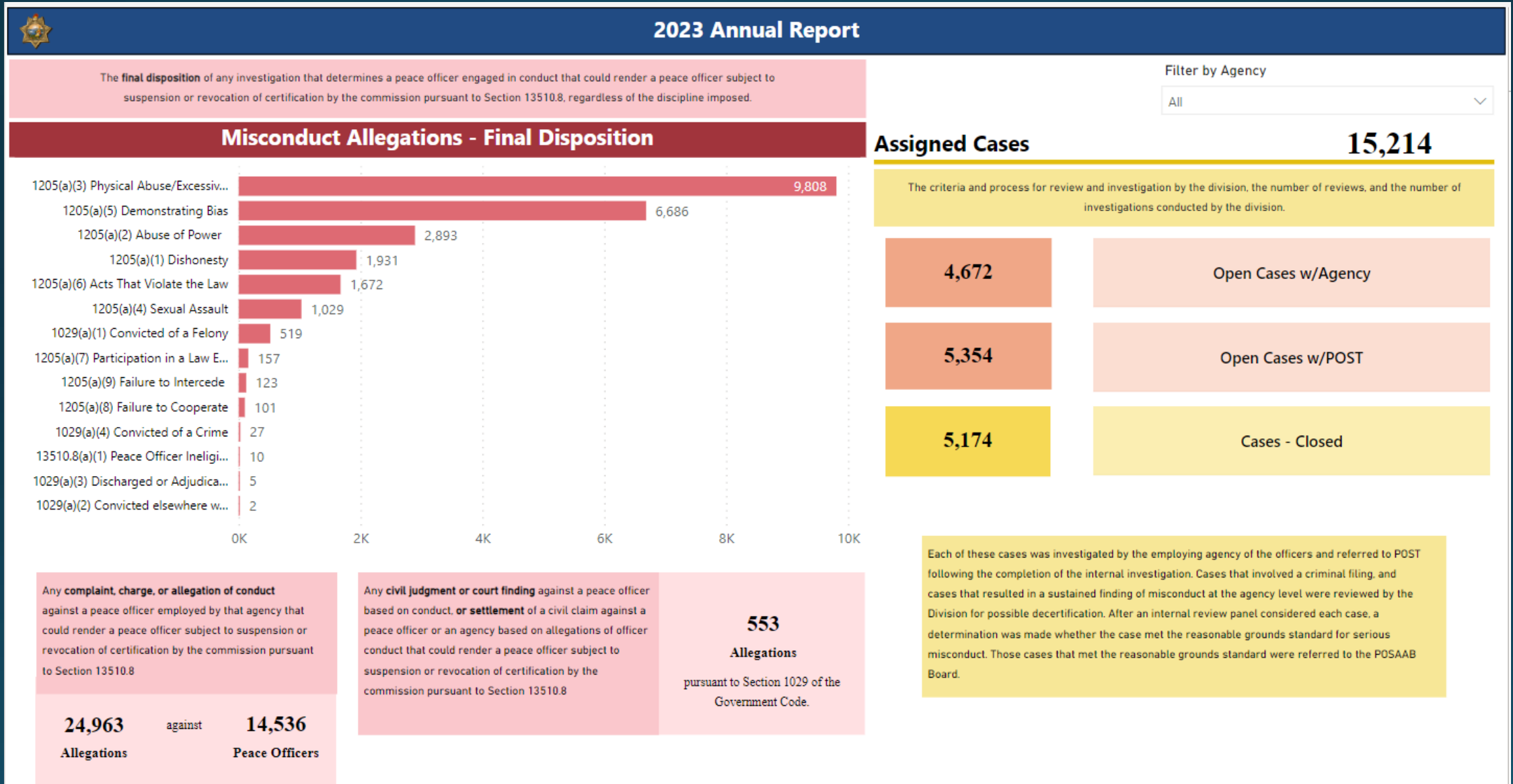
Last Name ^	First Name ^	Certification Action ^	Effective Date ^	Accusation ^	Last Employing Agency ^	Basis ^
Acosta	Giovanni	Temporary Suspension	06/16/2023		Garden Grove PD	Discharged by agency - Egregious or Repeated Acts that Violate the Law
Aguilera	Sonny	<del>Temporary Suspension</del> Revoked	<del>03/08/2023</del> 01/09/2024		San Bernardino PD	<del>Resigned/Retired pending investigation -</del> Dishonesty Default revocation for failure to respond to Notice of Intent to Revoke
Albania	Randall Herrel R.	Ineligible	12/27/2023		Los Angeles County SD (last employed 02/17/2011)	Ineligible pursuant to GC § 1029
Alcantara	Cesar	Temporary Suspension	05/17/2023		San Diego PD	Resigned/Retired pending investigation - Dishonesty, Failure to Cooperate

57

# Agency Reporting Data

[illegible]

# 2023 Annual Report Data





## 2023 Annual Report

### Certification



Number of Basic Certificates issued in 2023.		3,326
The number of notices sent by the division pursuant to paragraph (1) of subdivision (a) of Section 13510.85	The number of requests for review received.	The number of suspensions or revocations or denials made pursuant to paragraph (2) of subdivision (a) of Section 13510.85
7	3	4

### Voluntary Surrenders

9

The number of certifications voluntarily surrendered, and the number placed on inactive status.

The <b>termination</b> or <b>separation</b> from employment or appointment, by that agency, of any peace officer. Separation from employment or appointment includes resignation or retirement.	6,136
	Separations
	6,784
	Terminations

Any **finding or recommendation** by a civilian oversight entity, including a civilian review board, civilian police commission, police chief, or civilian inspector general, that a peace officer employed by that agency engaged in conduct that could render a peace officer subject to suspension or revocation of certification by the commission pursuant to Section 13510.8

2

### Board Hearings and Reviews



The number of administrative hearings held on suspensions or revocations and the number of suspensions or revocations resulting from those hearings.

The board has their first hearing scheduled for December 14, 2023. The Board is expected to review **2** cases.

The number of review hearings held by the board and commission and the outcomes of those review hearings.

The board has their first hearing scheduled for December 14, 2023. The Board is expected to review **2** cases. As such, no cases have been referred to the ALJ.

Any cases of judicial review of commission actions on suspension or revocation and the result of those cases.

0

### Compliance Audits or Reviews

Any compliance audits or reviews conducted pursuant to this chapter and the results of those audits.

No compliance audits or reviews have been conducted.



# Clear & Convincing Evidence and Open Meetings Act



# Senate Bill 2: Clear and Convincing Evidence

**The Board:** “[The Advisory Board]...shall review the findings of investigations presented by the [Peace Officer Standards Accountability Division] ... and shall make a recommendation on what action should be taken on the certification of the peace officer involved. The Board shall **only recommend revocation if the factual basis for revocation is established by clear and convincing evidence.** ...The Commission shall review all recommendations made by the board.”

**The Commission:** “The Commission’s decision to adopt a recommendation by the Board to seek revocation shall require a two-thirds vote of Commissioners present and **shall be based on whether the record, in its entirety, supports the Board’s conclusion that serious misconduct has been established by clear and convincing evidence.**”

# Clear and Convincing Evidence?





# Hierarchy of Investigatory and Evidentiary Standards

## BEYOND A REASONABLE DOUBT

The evidence leaves you with  
“an abiding conviction that the charge is true.”

## CLEAR AND CONVINCING

It is “highly probable” that the facts in question are true.

## PREPONDERANCE

More likely to be true than not true.

## PROBABLE CAUSE

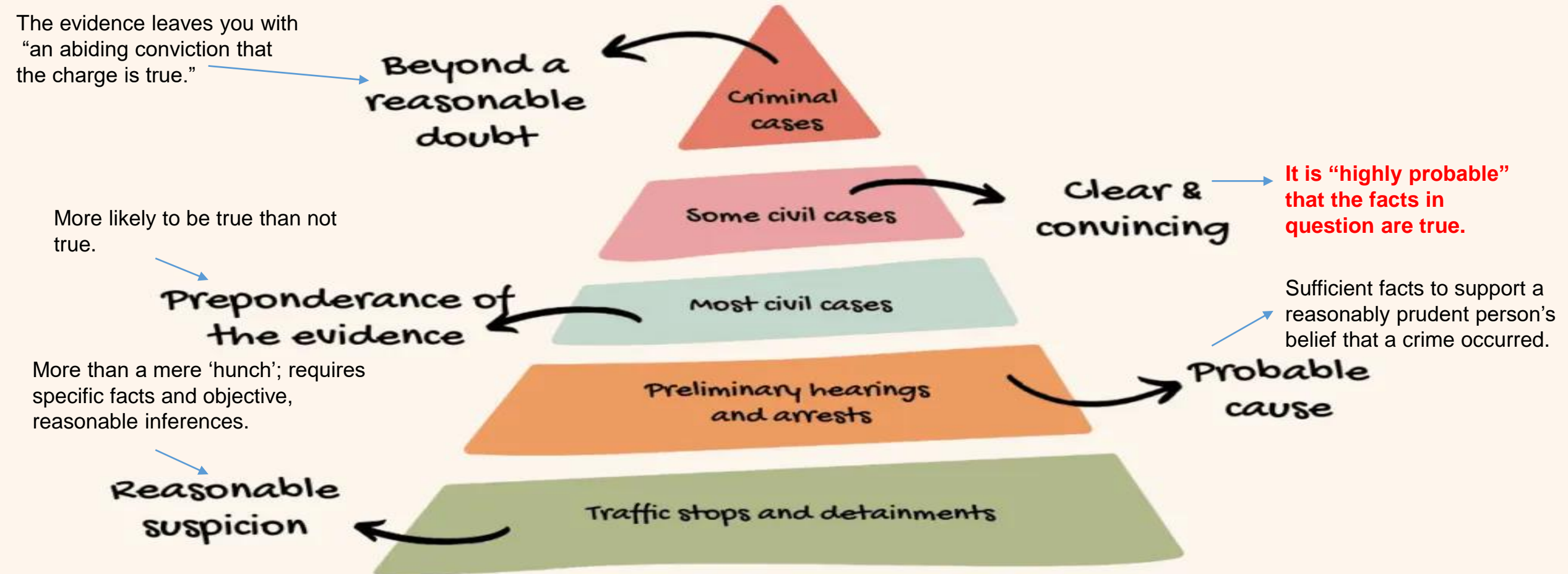
Sufficient facts to support a reasonably-prudent person’s belief  
that a crime has occurred.

## REASONABLE SUSPICION

More than a mere ‘hunch’; specific facts with objective and  
reasonable inferences that support belief crime occurred.



# Investigatory and Evidentiary Standards



# Evidentiary Standards

Preponderance of  
the Evidence

“More likely to be true  
than not true.”

**Clear and Convincing  
Evidence**

It is “**highly  
probable**” that the facts  
in question are true.

Beyond a  
Reasonable Doubt

The evidence leaves  
you with “an abiding  
conviction that  
the charge is true.”

More Elevated Standard	Intermediate Standard	High Probability of Truth
<p>“Preponderance of the evidence is the default standard in civil cases, but in some cases the more elevated standard of proof is clear and convincing evidence, which demands a greater degree of certainty.”</p> <p><i>People v. Soriano</i> (2021) 65 Cal.App.5th 278, 284</p>	<p>"The intermediate standard of clear and convincing evidence reduces the risk of error to the individual by increasing the government's burden of proof."</p> <p><i>People v. Mary H.</i> (2016) 5 Cal.App.5th 246, 256</p>	<p>“Clear and convincing evidence requires a finding of high probability...”</p> <p><i>San Diego P.D. v. Geoffrey S.</i> (2022) 86 Cal.App.5th 550, 576</p>

“The standard of proof known as clear and convincing evidence demands a degree of certainty greater than that involved with the preponderance standard, but less than what is required by the standard of proof beyond a reasonable doubt. This intermediate standard “requires a finding of high probability.”

....  
The precise meaning of ‘clear and convincing proof’ does not lend itself readily to definition. It is, in reality, a question of how strongly the minds of the ... triers of fact must be convinced that the facts are as contended by the proponent...Where clear and convincing proof is required, the proponent must convince the jury or judge ... that it is **highly probable** that the facts which he asserts are true. He must do more than show that the facts are probably true.”

*Conservatorship of O.B.* (2020) 9 Cal.5th 989, 998-999

**REMEMBER: There is Clear and Convincing Evidence  
when it is “highly probable” the facts are true.**

# Bagley-Keene Open Meeting Act

## **What is the Bagley-Keene Open Meeting Act (Bagley-Keene)?**

A California law that covers all state boards and commissions, requiring that these bodies publicly notice their meetings, prepare agendas, accept public testimony, and conduct their meetings in public unless specifically authorized by the Act.

# Meeting Definition

“Any congregation of a majority of the members of a State body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject jurisdiction of the state body to which it pertains” (Cal. Government Code section 11122.5(a)).



# Serial Meetings

- A majority of the members of a state body shall not use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter of the state body. (Cal. Government Code section 11122.5).
- Examples:
  - Hub of a wheel – One member acts as the hub of a wheel and communicates individually with other members, the spokes of a wheel, which constitutes a quorum of the body.
  - Chain communications – A-B, B-C, C-D until a majority of the members have discussed an agenda item.



# Closed Session

- Bagley-Keene authorizes closed sessions ONLY for specific topics, including:
  - Existing or anticipated litigation
  - Deliberation following public hearing
  - Administrative adjudications
- No exemption for embarrassing, difficult, sensitive, uncomfortable, or controversial topics



# Closed Session, continued

- State bodies must publicly announce they are going into closed session
- During the closed session, a state body may only discuss the items listed on the closed session agenda
- Following a closed session, the state body must provide an oral or written report on actions taken in closed session, if any
- For example:
  - The Board took action to dismiss employee #1234
  - The Board gave direction to its negotiators to sell the property located at...
  - The Board took no action on any closed session agenda item (if informational only)





# Conflict of Interest

# Ethical Decision Making

- Board members are required to take an ethics training course within the first six months of their appointment and repeat the course every two years throughout their term (Cal. Government Code sections 11146 through 11146.4)
- State officials' ethics online training course:  
<https://oag.ca.gov/ethics/course>

# General Principles of Ethical Decision Making

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The public's trust in government is based not only on public officials' compliance with ethics laws, but also on the perception of whether officials are acting properly.

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Avoid actions that would cause the public to question whether your decisions are based on personal interests instead of the public's interests.

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Consider the potential embarrassment to you and the Board if you act in a way that complies with minimum legal standards, but could still be perceived by the public as improper.

# General Principles, continued



Refuse any gifts or other special considerations from individuals or entities that appear before, or interact with, you in your public position.



Be impartial, and do not favor those who either have helped you or are in a position to help you, financially or otherwise.



Excuse yourself from decisions when you or your family's financial interests may be affected by your agency's actions.

# A Conflict Example Specific to the Board

## *Bias or Impartiality:*

- An officer comes before the Board and POSAD is seeking decertification. The underlying incident was public, and a Board member has taken part in demonstrations calling for the dismissal of the officer.

## *Conduct a Self-Evaluation:*

- Is the Board member unable to objectively participate because the Board member has an unalterably closed mind on a matter critical to the disposition of the proceeding?
- If so, then yes, an actual conflict would exist.

Must also consider – Will there be a perceived conflict of interest?

# Disqualification



- If you recuse yourself, you cannot participate in or attempt to influence the decision in any way
- You cannot attend a closed session on the matter in question or receive any confidential information about it



# Possible Penalties for Failure to Disqualify

- An official who must recuse, but fails to fully abstain from all participation, may face severe consequences:
  - The decision could be invalidated
  - The failure to fully abstain could be prosecuted as a criminal misdemeanor, and conviction could result in the official being removed from office
  - The official may be required to personally pay substantial fines of \$5,000 or more per violation, among other possible penalties
  - The official will suffer the personal and political embarrassment associated with being accused, or found guilty, of violating ethics laws



COMMISSION ON POST

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# OFFICE OF PUBLIC AFFAIRS

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# Media Requests and Inquiries



- POST's Office of Public Affairs (OPA) handles all media requests and inquiries.
- Refer all calls/emails pertaining to the Board or Commission to OPA.
- Contact OPA: [PublicAffairs@post.ca.gov](mailto:PublicAffairs@post.ca.gov)
  - Meagan Poulos and Katie Strickland



# Board and Commission Hearings

## Responsibilities

Meeting  
Preparation

Time  
Commitment

Required  
Training

# Traits of an Effective Board Member



**Dedicated and Committed to the Mission/Mandate of the Board**



**Straightforward and Impartial in Approaching Matters before the Board**



**Ability and willingness to participate assertively in deliberation while respecting the opinions of others**



**Knowledgeable and an insatiable learner**

# Traits, continued



**Values discretion and confidentiality**



**Willingness to delegate operational details to others to support the work of the Board**



**Ability to evaluate information systemically and in context**





# Use of Force Training





# Questions?