

**DATE:** November 17, 2022

**TO:** Public Safety Advisory Board

**FROM:** Michael Canfield, Police Captain

**SUBJECT:** CLEAR Act/State Auditor's Report on Bias and Extremism in Policing

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**PURPOSE**

Receive a report on the California Law Enforcement Accountability Reform Act (CLEAR Act/Assembly Bill 655) and State Auditor's Report 2021-105 related to bias and extremism in policing, and appoint a subcommittee of the Public Safety Advisory Board to review current practices and explore potential practices to prevent bias and extremism in the Mountain View Police Department.

**BACKGROUND**

On January 21, 2022, following the January 6th riots at the United States Capital and citing a 2006 FBI report on White Supremacist infiltration of Law Enforcement, Assembly Bill (AB) 655, also known as the CLEAR Act, was introduced in the California state legislature. The purpose of the bill was to address concerns related to extremism and extremist infiltration of law enforcement. The bill was signed into law on September 14, 2022. The CLEAR Act requires law enforcement agencies to screen candidates for participation in hate groups or the advocacy of expressions of hate or violence and requires law enforcement agencies to investigate complaints of officer involvement in such behavior. (More information is provided below and in Attachment 1 to this memo.)

In April of 2022, the State Auditor's Office authored a report, 2021-105, (State Auditor Report) on bias and extremism in law enforcement based on the review of five large law enforcement agencies across the State of California. The report identified several areas for improvement in these agencies and made operational and policy recommendations. (More information is provided below and in Attachment 2 to this memo.)

On June 23, 2022, the Public Safety Advisory Board (PSAB) developed a proposed work plan for Fiscal Year 2022-23, which included a project to explore opportunities to prevent extremism in the Mountain View Police Department (MVPD), citing AB 655 and the State Auditor's Report. The City Council approved the PSAB work plan on September 13, 2022.

## **DISCUSSION**

### **The CLEAR Act/AB 655**

The CLEAR Act requires that the background investigation of prospective law enforcement candidates in California include an inquiry into the candidate's membership or participation in any "hate group activity, or the advocacy of public expression of hate." The CLEAR Act also requires all law enforcement agencies to investigate complaints of any peace officer engaged in members of a hate group, participation in any hate group activity, or advocacy of public expressions of hate. In the event of sustained findings, the CLEAR Act requires law enforcement agencies to remove the subject of the investigation of their "appointment" as a peace officer. Additionally, the CLEAR Act provides definitions for terminology that clarifies the functional definition of bias and extremism.

### **State Auditor's Report**

The State Auditor's Report examined five large and midsize law enforcement agencies from different parts of California (the California Department of Corrections and Rehabilitation, the Los Angeles Sheriff's Department, the San Jose Police Department, the Stockton Police Department, and the San Bernadino Police Department) and found some officers in each department engaged in biased conduct, either through their on-duty interactions with the public or through their social media posts. The Auditor's Office reviewed internal affairs complaints from each department, the departments' bias related policies, hiring and officer demographics, and the public social media accounts of 450 officers to determine if bias was present or if there were indications of hate group membership.

The State Auditor's Office determined there was no evidence of hate group membership on the officers' social media accounts; however, 17 of the 450 officers' social media posts were "identified either promoting negative stereotypes or contained deliberately hateful and derogatory speech directed at a group of people." Furthermore, six of the social media posts had content suggesting support for groups with "problematic principles."

The State Auditor's Office identified examples of biased conduct and found that the five agencies had not adequately guarded against biased conduct amongst their peace officers. The report highlighted the following four key areas where the agencies had fallen short:

- They had not used sufficient strategies to achieve representative diversity and hiring.
- They had not implemented robust community engagement strategies or employee training practices.

- They had not established sufficient proactive processes to identify possibly biased behavior.
- They had not consistently conducted adequate investigations of alleged bias behavior.

The State Auditor's Report provided the following recommendations on law enforcement best practices, to address these four keys areas:

- Formalized recruiting strategy that emphasizes representative diversity;
- Formalized community engagement strategy that connects to diverse communities;
- Formalized processes for early identification and intervention of potential bias indicators;
- Structured oral board question designed to evaluate the applicant's ability to interact with a diverse population;
- Establishment of a sufficient framework for consistently identifying, investigating, and tracking incidents of bias related conduct to properly address such behavior;
- Internal investigations into bias that incorporate the reasonable appearance that bias had influence on an officer's actions rather than the officers own account of the influence of bias;
- Background investigator contact of secondary references for improved assessment of potential bias or hate group affiliation; and
- Background investigator review of social media to look for examples of bias, prejudice, or hate group affiliation.

### **Current MVPD Practices**

Although the CLEAR Act provides additional clarification regarding bias, there is currently an existing law that requires peace officers to meet minimum standards, including that peace officers be free from any physical, emotional, or mental condition, including bias against race or ethnicity, gender, nationality, religion, disability, or sexual orientation, which might adversely affect the exercise of the powers of a peace officer (Gov. Code 1031 (f)). The Police Officer Standards of Training (POST) currently requires all police officers to satisfactorily complete academy training on bias and discrimination and that they complete additional related training every five (5) years thereafter, or on a more frequent basis if deemed necessary, in order to keep current with changing racial, identity, and cultural trends (Pen. Code 13519.4 (i)).

Current law requires that POST study, review, and update their regulations and associated screening materials related to the evaluation of emotional and mental condition to include the identification of explicit and implicit bias toward race or ethnicity, gender, nationality, religion, disability, or sexual orientation (Gov. Code 1031.3.). Given this POST requirement, the subject matter and frequency POST mandates for related training is subject to modification.

Additional existing law provides that a peace officer may have their certification suspended or revoked if the person has engaged in any serious misconduct while employed as a peace officer, where "serious misconduct" includes "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." (Pen. Code, 13510.8(b)).

The MVPD defines allegations of bias as major misconduct. MVPD practice for internal affairs investigations of major misconduct includes the creation of a review board, which involves the Human Resources Department and the review of sustained findings by the City Attorney's Office.

Additionally, effective January 1, 2023, Senate Bill 2 will empower POST to review and potentially decertify any peace officer with a sustained allegation of serious misconduct, which includes demonstrated bias on the basis of any legally protected status, in violation of law or department policy, or in a manner inconsistent with a peace officer's obligation to carry out their duties in a fair and unbiased manner.

Regarding peace officer background investigations, the MVPD currently contracts with an outside vendor who operates in adherence with POST guidelines and recommendations. The background investigators review public social media accounts, tattoos, and references for indications of bias or other concerning behavior. Current State law prohibits employers from requesting or requiring applicants disclose the usernames or passwords for their personal social media. The State Auditor's Report acknowledges this apparent conflict; however, the Report indicated it was unclear if this applied to peace officers. Currently POST is instructing background investigators that this information is protected and may not be requested during a background investigation.

### **Considerations in Identifying and Preventing Extremism in the Work Force**

There are many complexities in considering the opportunities and challenges associated with further preventing bias and extremism in the work force. Some of these considerations are listed below.

- How to compare findings and identify best practices across a range of agencies of different sizes and with different cultures, circumstances, and issues.

- How to address legal limits regarding the access to personal information.
- How to track the shifts in perception and meaning related to potentially extreme iconography and associations.
- How to best determine beliefs and the link to behavior and performance.
- How to identify intent and meaning related to iconography and associations when they are shared in both extremist and nonextremist beliefs and organizations.
- How to differentiate between biased and nonbiased expressions or support of political, religious, and personal beliefs given the complexity of the issues and the lack of established legal precedent.

Staff will work with the recommended PSAB subcommittee focused on this PSAB work plan item to discuss these and other opportunities and challenges.

### **Subcommittee Action Steps**

The work of the subcommittee could include the following action steps:

- Receive an overview of the CLEAR Act and State Auditor's Report.
- Receive updates on the upcoming implementation of the CLEAR Act.
- Review MVPD's general orders related to bias-based complaints.
- Review MVPD's complaint investigation procedure for bias-based complaints.
- Review MVPD's training related to bias and extremism.
- Review MVPD's demographics and recruitment practices related to racial/ethnic and gender diversity.
- Explore and develop recommendations on ways to ensure MVPD is addressing bias and implementing best practices.
- Provide updates and recommendations to the PSAB for consideration.

## **RECOMMENDATION**

Staff recommends that the PSAB create a subcommittee to review the CLEAR Act, State Auditor's Report, and MVPD current practices and make recommendations on ways to further prevent extremism in the MVPD.

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Attachments: 1. [The CLEAR Act/AB 655](#)  
2. [State Auditor's Report 2021-105](#)