

ASSEMBLY THIRD READING

AB 2042 (Jackson)

As Amended May 16, 2024

Majority vote

SUMMARY

Requires the Commission on Peace Officer Standards and Training (POST) to develop guidelines and standardized training courses for use of canines by law enforcement.

Major Provisions

- 1) Requires POST, on or before January 1, 2026, to develop uniform, minimum guidelines for the use of canines by law enforcement.
 - a) An explanation of the legal standards on the use of force with a canine, as specified;
 - b) An explicitly stated requirement that officers carry out duties, including use of force with respect to canines, in a manner that is fair and unbiased;
 - c) Minimum patrol performance standards, including competencies in obedience, search, apprehension, and handler protection;
 - d) Minimum detection performance standards, including competencies in control, alert, and odor detection;
 - e) A requirement that an officer may deploy a canine only if they reasonably believe it is proportional to the seriousness of the suspected offense or the reasonably perceived level of actual or physical threat of resistance;
 - f) Requirements for use of an unleashed police canine to arrest or apprehend a person;
 - g) Requirements for use of a police canine for crowd control at an assembly, protest, or demonstration;
 - h) Procedures to minimize harm to innocent bystanders by an unleashed police canine;
 - i) A requirement that all patrol canine handlers shall be equipped with a supplemental method of aiding with the release of a bite including, but not limited to, a breaker bar, e-collar, pinch collar or other device;
 - j) A requirement that, unless it would otherwise increase the risk of injury or escape, a clearly audible warning announcing the potential release of a canine if the suspect does not surrender will be given prior to the release, if feasible;
 - k) A requirement that officers allow a reasonable opportunity to a suspect to comply after a warning, if feasible;
 - l) Factors for evaluating and reviewing all canine use of force incidents;
 - m) The role of supervisors in the review of use of force canine applications; and,

- n) A requirement that any canine team that does not meet the agency's required training regimen and guidelines will be prohibited from field assignment with the canine until such training and guidelines have been successfully satisfied.
- 2) Authorizes POST to periodically amend the guidelines, as specified.
- 3) Requires POST, on or before January 1, 2026, to certify courses of training for all law enforcement canine handlers and those law enforcement supervisors directly overseeing canine programs in the use of canines by law enforcement.
- 4) Requires POST training courses to include, at a minimum, both of the following:
 - a) An explanation of legal standards for the use of force with a canine, as specified; and,
 - b) Requirements for canine handlers and law enforcement supervisors who directly oversee canine programs to demonstrate their knowledge and understanding of their law enforcement agency's canine policy.
- 5) Requires all courses to be certified by POST before being implemented.

COMMENTS

According to the Author

"There currently isn't a statewide policy that governs the use of police dogs. This bill seeks to fix that."

Arguments in Support

None Submitted.

Arguments in Opposition

According to *ACLU California Action*, "As you know, the practice of training and using dogs to attack people dates to slave patrols, and police agencies continue to disproportionately use attack dogs against our Black and Latino communities. Statewide, two-thirds of Californians severely injured by police dogs are people of color. Notably, many of the attacks by police dogs are perpetrated against people who are unarmed, do not pose a danger to officers or others, are suspected of minor crimes or no crime at all, and often against people who are experiencing a behavioral health crisis. Their use is outdated and dangerous – with the potential of severe, life-altering, and deadly consequences.

"We know that without clear restrictions written into state law, AB 2042 will do no more than endorse the status quo and usher in objectively weak rules for this dangerous practice, perpetuating standards far below the federal standards for the limited permissible use of police attack dogs, and that do not mirror best practices from other law enforcement agencies. We have observed police special interest groups such as Lexipol and the Peace Officers Research Association of California (PORAC), among others, manipulate the outcome of POST's use of force policy-making process in ways that completely undermined both public safety and the Legislature's intent. AB 2042's delegation of authority to set canine use of force standards to POST, without meaningful guidelines or limitations, directly facilitates police special interests'

efforts to perpetuate the status quo. Also of concern is the increase to POST's budget in light of potential cuts to critical social safety net programs and other critical funding. As such, we respectfully oppose AB 2042 unless amended.

"AB 2042 should be amended to, at a minimum, include clear and strict restrictions on the use of police attack dogs.

"Instead of setting clear and strict restrictions on the use of police attack dogs, AB 2042 grants POST unfettered power to develop regulations for the use of police dogs even in situations where your constituents and other Californians fundamentally believe police attack dogs should never be used. Despite what law enforcement tells us, data and public records show that police most commonly use attack dogs to inflict severe injuries on people who pose no serious danger to officers or to others. The vast majority of Californians severely injured by police attack dogs are not armed with any weapon, according to data reported by police agencies to the state Department of Justice. A news investigation analyzing the same official data found that many Californians seriously injured by police attack dogs were not combative or even running from "police but reported to be only 'passively not complying.'" A canine attack - which may lead to serious and often permanent damage to nerves, muscles, and bones, and even loss of organs and limbs - is *not* proportional as a response to any movement a person may make, or any form of physical or threatened resistance. Such an attack would obviously be inappropriate in response to a person merely flinching or cowering, or verbally or passively resisting in a manner that poses no threat to the officer or another person, or unable to respond to police command and in need of medical care because the individual has a mental or physical disability or is experiencing a behavioral health crisis. Given the potential for harm by police attack dogs, AB 2042 must be amended to, at a minimum, prevent police dogs from being used for 1) non-violent offenses, 2) crowd control at an assembly, protest, or demonstration, and 3) when a person does not present an imminent threat of death or serious bodily injury to others or the officer.

"AB 2042 must provide clear and strict limitations on when a police attack dog can be deployed to arrest or apprehend a person. These limitations must include, at a minimum, all the following:

- 1) The person is being pursued for a crime of violence (i.e., a felony involving the infliction or threatened infliction of serious bodily injury or death).
- 2) Canine handler must remain within visual and auditory range of the canine;
- 3) Canine handler shall have approval from a canine supervisor (sergeant or higher) prior to deployment;
- 4) Canine handler shall issue three loud and clear warnings capable of being heard throughout the area of deployment that a canine will be deployed;
- 5) Canine handler shall provide a reasonable amount of time after the warning described in number 3 to enable uninvolved members of the public and other officers to reach a safe distance from the area of deployment, and the person being pursued to yield to the officer's commands prior to deployment;
- 6) A police canine shall not be used for crowd control at any assembly, protest, or demonstration;

- 7) A police canine shall not be used to bite in any circumstance unless there is an imminent threat of death or serious bodily injury to the officer or another person by the person against whom the canine is used, and alternatives to force could not reasonably be expected to defend against this threat.

"AB 2042 should be amended to include that corresponding training regarding the use of police attack dogs shall be consistent with, at a minimum, all of the limitations set forth immediately above.

"The delegation to POST to establish regulations for police attack dogs will certainly lead to weak standards, which will not safeguard the rights or well-being of our community.

"Although the Legislature has regularly delegated to POST the responsibility to develop policies related to officer use of force and other agency practices, POST's actions over the past several years have been inconsistent with the spirit, intent, and sometimes plain language of the law.

"For example, AB 846 (Burke), Chapter 322, Statutes of 2020 required POST to update their regulations and screening material for prospective police officers to help identify implicit or explicit bias. Instead, POST rejected public comment recommendations from the Racial and Identity Profiling Advisory (RIPA) Board, and blatantly refused to implement the spirit and intent of the legislature despite RIPA highlighting the Legislature's explicit intent. Only after the Office of Administrative Law rejected POST's regulations because POST did not meaningfully respond to the RIPA Board's comments, did POST amend its regulations to comply.

"The Legislature also directed POST to develop guidelines and training to address peace officer bias. POST's existing training curricula do not train officers based on the existing definitions of bias enacted by the Legislature and instead uses a lower standard than California law. Additionally, the Legislature in 2017 directed POST to "develop and disseminate guidelines . . . [for] effective, noncombative methods of carrying out law enforcement duties in a diverse racial, identity, and cultural environment," which agencies can use to develop their own policies implementing RIPA. POST has never created these guidelines, despite the recommendation by the RIPA Board that it complete this duty, and numerous findings of this failure in the RIPA reports. While POST has finally agreed to satisfy this obligation, it has not yet done so.

"Senate Bill 2 (Bradford) Chapter 409, Statutes of 2021 created the police decertification process and delegated to POST the duty to develop regulations defining "serious misconduct" that would render an individual ineligible to work as a peace officer in California. The Legislature set a floor for minimum conduct that would satisfy this definition and authorized POST to expand those grounds—yet POST's proposed regulations either restate this minimum or, in some cases, attempt to undercut the statutory language by permitting conduct that the Legislature determined categorically rendered an individual unfit to serve as an officer.

"POST should not be entrusted to draft regulations to safeguard the rights and safety of our community against the use of police attack dogs because it has allowed police special interest groups, such as Lexipol and the PORAC, to undermine use of force policies and trainings in ways that endanger public safety. For example, POST caved to the demands of police special interest groups (e.g., PORAC and California Police Chiefs Association) who objected to an AB 392 training video. Records indicate POST discussed the content of the training with these opponents of the new law behind closed doors and agreed to their demands remove portions of the training, then completely de-published the training, and only republished a revised, watered-

down version after these special interest groups provided their stamp of approval. Police special interest groups have continuously employed aggressive efforts to limit and undermine POST regulations, making it plain that legislation granting POST the authority to regulate the use of police attack dogs would fare no differently. For these reasons, strong statewide limitations on the use of attack dogs by California's police agencies must be explicitly legislated in clear statutory standards.

"Funding POST to develop standards and training that would be more effectively and efficiently set by statute is not a fiscally sound approach.

"POST's budget is bloated, and the current allocation of funds to it is disproportionate when compared to other critical areas like education, healthcare, and social services. POST's proposed budget for training alone, for fiscal year 2024-2025, is more than half (57%) of its total budget. Given a potential fiscal crisis in California that will likely require significant cuts to critical social safety net programs, we are compelled to oppose policies that would direct more funding to law enforcement when people are struggling to access affordable housing, quality education, community-based mental health and substance use services, and low or no-cost healthcare.

"Moreover, the Little Hoover Commission (LHC), the Legislature's own oversight agency, has called into serious doubt the efficacy of POST trainings. In its 2021 report, LHC found that California "spends *millions of dollars* on law enforcement training each year, yet there is *very little evidence* to demonstrate which types of training actually achieve intended goals and positively impact officer behavior in the field – and which do not." LHC's report also explained the importance of assessing and improving law enforcement training courses *prior* to spending more taxpayer dollars on training that may have limited effectiveness. The California State Auditor has also raised similar concerns about POST training, further raising concerns about the effectiveness of training being delivered to officers. Similarly, the RIPA Board raised concerns in its 2022 and 2023 Annual Reports. AB 2042 would require a convoluted, costly process for POST to create regulations for the use of police attack dogs, when instead clear and strict limitations on the use of police attack dogs could be set simply, clearly, and effectively by statute.

"We are deeply concerned with the approach employed in AB 2042, which cedes the authority of regulating the use of police attack dogs to POST. Conspicuously absent are clear and strict statutory limitations."

FISCAL COMMENTS

According to the Assembly Appropriations Committee, "One-time costs to POST (General Fund) of an unknown but likely significant amount to establish guidelines for use of canines by law enforcement and certify training courses for canine handlers and their supervisors, possibly in the hundreds of thousands of dollars."

VOTES

ASM PUBLIC SAFETY: 6-1-1

YES: McCarty, Stephanie Nguyen, Reyes, Ting, Wilson, Zbur

NO: Alanis

ABS, ABST OR NV: Lackey

ASM APPROPRIATIONS: 9-4-2

YES: Wicks, Arambula, Bryan, Wendy Carrillo, Mike Fong, Grayson, Haney, Hart, Pellerin

NO: Sanchez, Dixon, Jim Patterson, Ta

ABS, ABST OR NV: Calderon, Villapudua

UPDATED

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