

RESOLUTION LATE FILED 01-2016

DIGEST

Government Code: Qualifications to Become a Police Officer

Amends Government Code section 1029 to expand the list of offenses which makes a person ineligible to be a police officer to include convictions for filing a false police report or lying about the commission of a crime.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Government Code section 1029 to read as follows:

§ 1029

1
2 (a) Except as provided in subdivision (b), (c), or (d), each of the following persons is
3 disqualified from holding office as a peace officer or being employed as a peace officer of the
4 state, county, city, city and county or other political subdivision, whether with or without
5 compensation, and is disqualified from any office or employment by the state, county, city, city
6 and county or other political subdivision, whether with or without compensation, which confers
7 upon the holder or employee the powers and duties of a peace officer:

8 (1) Any person who has been convicted of a felony or who, after January 1, 2017 is
9 convicted of a violation of Penal Code sections 148.5 or 118.1.

10 (2) Any person who has been convicted of any offense in any other jurisdiction which
11 would have been a felony if committed in this state or any person who, after January 1 2017, is
12 convicted of any offense in any other jurisdiction which would have been a violation of Penal
13 Code sections 148.5 or 118.1 if committed in this state.

14 (3) Any person who, after January 1, 2004, has been convicted of a crime based upon a
15 verdict or finding of guilt of a felony by the trier of fact, or upon the entry of a plea of guilty or
16 nolo contendere to a felony. This paragraph shall apply regardless of whether, pursuant to
17 subdivision (b) of Section 17 of the Penal Code, the court declares the offense to be a
18 misdemeanor or the offense becomes a misdemeanor by operation of law.

19 (4) Any person who has been charged with a felony and adjudged by a superior court to
20 be mentally incompetent under Chapter 6 (commencing with Section 1367) of Title 10 of Part 2
21 of the Penal Code.

22 (5) Any person who has been found not guilty by reason of insanity of any felony.

23 (6) Any person who has been determined to be a mentally disordered sex offender
24 pursuant to Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the
25 Welfare and Institutions Code.

26 (7) Any person adjudged addicted or in danger of becoming addicted to narcotics,
27 convicted, and committed to a state institution as provided in Section 3051 of the Welfare and
28 Institutions Code.

29 (b) (1) A plea of guilty to a felony pursuant to a deferred entry of judgment program as
30 set forth in Sections 1000 to 1000.4, inclusive, of the Penal Code shall not alone disqualify a
31 person from being a peace officer unless a judgment of guilty is entered pursuant to Section
32 1000.3 of the Penal Code.

33 (2) A person who pleads guilty or nolo contendere to, or who is found guilty by a trier of
34 fact of, an alternate felony-misdemeanor drug possession offense and successfully completes a
35 program of probation pursuant to Section 1210.1 of the Penal Code shall not be disqualified from
36 being a peace officer solely on the basis of the plea or finding if the court deems the offense to be
37 a misdemeanor or reduces the offense to a misdemeanor.

38 (c) Any person who has been convicted of a felony, other than a felony punishable by
39 death, in this state or any other state, or who has been convicted of any offense in any other state
40 which would have been a felony, other than a felony punishable by death, if committed in this
41 state, and who demonstrates the ability to assist persons in programs of rehabilitation may hold
42 office and be employed as a parole officer of the Department of Corrections or the Department of
43 the Youth Authority, or as a probation officer in a county probation department, if he or she has
44 been granted a full and unconditional pardon for the felony or offense of which he or she was
45 convicted. Notwithstanding any other provision of law, the Department of Corrections or the
46 Department of the Youth Authority, or a county probation department, may refuse to employ that
47 person regardless of his or her qualifications.

48 (d) Nothing in this section shall be construed to limit or curtail the power or authority of
49 any board of police commissioners, chief of police, sheriff, mayor, or other appointing authority
50 to appoint, employ, or deputize any person as a peace officer in time of disaster caused by flood,
51 fire, pestilence or similar public calamity, or to exercise any power conferred by law to summon
52 assistance in making arrests or preventing the commission of any criminal offense.

53 (e) Nothing in this section shall be construed to prohibit any person from holding office
54 or being employed as a superintendent, supervisor, or employee having custodial responsibilities
55 in an institution operated by a probation department, if at the time of the person's hire a prior
56 conviction of a felony was known to the person's employer, and the class of office for which the
57 person was hired was not declared by law to be a class prohibited to persons convicted of a
58 felony, but as a result of a change in classification, as provided by law, the new classification
59 would prohibit employment of a person convicted of a felony.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Mark Harvis, Robin Bernstein-Lev, Arwen Johnson, Michael Fern, Rourke Stacey, Dillon Ford, Albert Camacho, Nick Stewart-Oaten, Tom Moore, Casey Lilienfeld

STATEMENT OF REASONS

The Problem: Under the existing government code, convictions for various criminal offenses prevent an individual from becoming (or remaining) a police officer. However, not listed in these restrictions are criminal convictions for lying about the commission of a criminal offense or lying in a sworn document (ie a police report). Consequently, under current California law, officers who are known by their employers to be dishonest AND have been convicted of criminal acts specifically relating to their employment (such as writing false police reports) are not banned from working as police officers. As shown by the attached article, even when a police chief wants to remove such corrupt officers from the force, he is prevented from automatically doing so by the terms of current law and civil service protections. As a result, current law does not sufficiently discourage police officers from lying in the course of their employment and does not give sufficient latitude to police supervisors to fire such corrupt officers once they have been

duly convicted. <http://www.latimes.com/local/california/la-me-deputies-false-statements-20160308-snap-htmlstory.html>

The Solution: The proposed resolution would add two penal code sections to the automatic disqualification list – PC § 118.1 (false report by officer) and PC § 148.5 (false report of a crime). Such an addition would send a very strong message to would-be dishonest officers that lying about something as serious as a criminal case will not be tolerated and would permit police supervisors to fire such officers upon conviction.

CURRENT OR PRIOR RELATED LEGISLATION

Not known.

IMPACT STATEMENT

The proposed resolution does not affect any other law, statute or rule.

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RESOLUTION COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

Amends Government Code section 1029 to expand the list of offenses which makes a person ineligible to be a police officer to include convictions for filing a false police report or lying about the commission of a crime. This resolution should be approved in principle because an essential element of the criminal justice system is the public belief that the system is fair, and that those who are investigating the crimes are accurately reporting the events.

As the law is currently written, there are certain criminal convictions which prohibit an individual who is seeking employment as a peace officer from being hired, or which would cause an officer to be removed from duty. There is a glaring gap in the current language which allows an officer convicted of filing a false police report (Pen. Code, § 118.1), or lying about the commission of a crime (Pen. Code, § 148.5), to either gain employment or remain employed. These types of convictions call in to question the credibility, objectivity and trustworthiness of the officers and undermine the criminal justice system. Currently, the law does not require that these officers be removed from duty if they are convicted of the above offenses. This resolution provides a means for an officer’s removal, which will strengthen the justice system, increase the public’s faith in the system, and promote the highest standards in law enforcement.