

BUREAU OF SECURITY AND INVESTIGATIVE SERVICES

INITIAL STATEMENT OF REASONS

Hearing Date: No hearing date has been scheduled for the proposed action.

Subject Matter of Proposed Regulations: Substantial Relationship Criteria, Criteria for Evaluating Rehabilitation

Section(s) Affected: Sections 602 and 602.1 of Division 7 of Title 16 of the California Code of Regulations (CCR)

Background and Statement of the Problem:

The Bureau of Security and Investigative Services (Bureau) licenses and regulates companies and employees in the private security industry via six practice acts: Locksmith Act, Collateral Recovery Act, Private Investigator Act, Proprietary Security Services Act, Private Security Services Act, and Alarm Company Act.

The Bureau currently provides licensure to approximately 333,504 licensees, registrants, and permit/certificate holders in the state.

In accordance with the statutory amendments implemented in Assembly Bill (AB) 2138 (Chiu, Chapter 995, Statutes of 2018), by July 1, 2020, Business and Professions Code (BPC) section 481 will require the Bureau to develop criteria to aid it in determining whether a crime is substantially related to the qualifications, functions, or duties of the profession it regulates, when considering the denial, suspension, or revocation of a license. BPC section 481 will require the Bureau to determine whether a crime is substantially related to the qualifications, functions, or duties of the profession it regulates by using criteria including: the nature and gravity of the offense, the number of years elapsed since the date of the offense, and the nature and duties of the profession in which the applicant seeks licensure or in which the licensee is licensed.

BPC section 482 will require the Bureau to develop criteria to evaluate the rehabilitation of a person when considering the denial, suspension, or revocation of a license. The Legislature's "clear intent" in enacting AB 2138 was "to reduce licensing and employment barriers for people who are rehabilitated." (*Moustafa v. Board of Registered Nursing* (2019) 29. Cal.App.5th 1119, 1135.)

Proposed 16 CCR 602 will establish the criteria for determining when a crime or act is substantially related to the qualifications, functions, or duties of a licensee. Proposed section 602.1 will establish the criteria for determining rehabilitation of an applicant, licensee, or petitioner when considering the denial, suspension, revocation, or reinstatement of an applicant, licensee, or petitioner.

As required under AB 2138, the Bureau proposes to amend sections 602 and 602.1 to adhere to these mandates and revise its criminal conviction substantial relationship and rehabilitation criteria.

SPECIFIC PURPOSE, ANTICIPATED BENEFIT AND RATIONALE:

Amend section 602 of Article 1 of Division 7 of Title 16 of the CCR (Substantial Relationship Criteria)

Amend section 602(a)

Purpose: The purpose of amending section 602(a) is to expand the regulation to include discipline under BPC section 141, because a disciplinary action in a foreign jurisdiction for any act that is substantially related to the professions under the Bureau’s jurisdiction may be a ground for disciplinary action by the Bureau. This subdivision would also include substantially related “professional misconduct,” since the Bureau may consider such misconduct in denying licenses under BPC section 480.

Anticipated Benefit: The proposed revisions to section 602(a) would provide clarity to license applicants and licensees that the Bureau is statutorily authorized to deny, suspend, or revoke, as applicable, on the basis of professional misconduct and discipline in an out-of-state jurisdiction.

Necessity: BPC section 141 authorizes the Bureau to discipline a license on the basis of substantially related out-of-state discipline. BPC section 480 also authorizes the Bureau to deny a license application on the basis of substantially related professional misconduct that is the basis of formal discipline by a licensing board in or outside of California. The regulation seeks to implement, interpret, and make specific BPC sections 141, 480, and 481 by adding their relative provisions to the Bureau’s substantial relationship criteria regulation. Accordingly, the proposal is necessary to provide the appropriate notice to applicants and licensees that discipline in an out-of-state jurisdiction and professional misconduct are grounds for license denial, suspension, or revocation. The proposal is necessary to consolidate into one regulation the criteria the Bureau will apply in evaluating whether a crime or other misconduct is substantially related to the licensed profession.

Amend section 602(b)

Purpose: The purpose of adding section 602(b) is to implement the mandates of AB 2138 and BPC section 481, which requires each board to develop criteria to aid it in determining whether a crime is substantially related to the qualifications, functions, or duties of the professions regulated by the boards, when considering the denial, suspension, or revocation of a license.

Anticipated Benefit: The proposed addition of section 602(b) would provide clarity and transparency to applicants and licensees by listing the specific criteria the Bureau must consider when making substantial relationship determinations. The proposal would also make aware relevant parties to any administrative appeal (e.g., the Deputy Attorney General, the Administrative Law Judge, respondent, and respondent’s counsel) of the specific criteria used by the Bureau to make a substantial relationship determination.

Necessity: BPC section 480 presently authorizes the Bureau to deny an application for licensure based on a conviction of a crime or act substantially related to the licensed business or profession. BPC section 490 authorizes the Bureau to suspend or revoke a license on the basis that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession. BPC section 481 requires the boards to develop criteria to help evaluate whether a crime is substantially related to the regulated business or profession, and the Bureau established the criteria via regulations.

AB 2138 specifies three criteria that boards must consider when evaluating whether a crime is “substantially related” to the regulated business or profession. The criteria “shall include all of the following: (1) The nature and gravity of the offense[;] (2) The number of years elapsed since the date of the offense[; and,] (3) The nature and duties of the profession in which the applicant seeks licensure or in which the licensee is licensed.” Accordingly, the proposed regulation lists each of these criteria for the Bureau to consider when making the substantial relationship determination. This proposed addition is necessary to conform the regulation to statute.

Amend section 602.1 of Article 1 of Division 7 of Title 16 of the CCR (Criteria for Evaluating Rehabilitation)

Amend section 602.1(a)

Purpose: The purpose of amending section 602.1(a) is to comply with the requirements of AB 2138 and BPC section 482, which requires boards to consider whether an applicant or licensee has made a showing of rehabilitation if the applicant has completed the criminal sentence at issue without a violation of parole or probation. As AB 2138 does not prescribe rehabilitation criteria, the proposal provides a specific list of criteria for the Bureau to consider for these applicants, licensees, and petitioners. Since AB 2138 requires the Bureau to consider rehabilitation in the narrow context of an applicant or licensee who completed the criminal sentence without a parole or probation violation, the list of criteria is limited to considerations relevant to the crime and the criminal sentence. This proposal is also intended to provide predictability in the application or discipline process.

Anticipated Benefit: The proposed revisions to section 602.1(a) would provide transparency and clarity to applicants, licensees, and petitioners who have completed their criminal sentence without a violation of parole or probation. Providing the list of

rehabilitation criteria would help applicants, licensees, and petitioners understand the facts and documents to present to the Bureau to demonstrate their rehabilitation. The proposal would also assist relevant parties to any administrative appeal (e.g., the Deputy Attorney General, the Administrative Law Judge, and the applicant's counsel) in advocating for or against, or deciding upon, applicants, licensees, or petitioners who have criminal convictions and completed parole or probation without a violation, by listing rehabilitation criteria applicable to the applicant.

Necessity: Existing law required boards to develop criteria to evaluate the rehabilitation of an applicant or licensee when considering denying or disciplining a license and to consider evidence of rehabilitation in making such decisions.

Operative July 1, 2020, BPC section 480 will prohibit the Bureau from denying a license on the basis that the applicant was convicted of a crime, or on the basis of the facts underlying a conviction, if the applicant "made a showing of rehabilitation pursuant to Section 482." In deciding whether to deny a license based on a conviction, the Bureau must consider evidence of the applicant's rehabilitation, pursuant to the process established in the Practice Acts, or its regulations, and as directed under BPC section 482.

To implement AB 2138, it is necessary for the Bureau to revise its regulations that establish criteria for evaluating rehabilitation. The Bureau must also decide whether an applicant, licensee, or petitioner "made a showing of rehabilitation," if they completed the criminal sentence at issue without a violation of parole or probation.

Unlike the substantial relationship criteria, AB 2138 does not prescribe rehabilitation criteria that the Bureau must consider when denying, suspending, or revoking a license. The extent to which a person complied with the terms of parole or probation is already a factor boards consider when evaluating rehabilitation, and it is currently considered by the Bureau in evaluating rehabilitation. But courts historically rejected the view that compliant applicants and licensees are, per se, rehabilitated: "The fact that a professional who has been found guilty of two serious felonies rigorously complies with the conditions of his probation does not necessarily prove anything but good sense." (*Windham v. Board of Medical Quality Assurance* (1980) 104 Cal.App.3d 461, 473; see also *In re Gossage* (2000) 23 Cal.4th 1080, 1099 ["Since persons under the direct supervision of correctional authorities are required to behave in exemplary fashion, little weight is generally placed on the fact that a[n] . . . applicant did not commit additional crimes or continue addictive behavior while in prison or while on probation or parole"].) Nonetheless, under AB 2138, the Bureau must now consider whether an applicant who complied with the terms of parole or probation made a showing of rehabilitation sufficient for licensure, even without considering other standard rehabilitation criteria.

The proposal specifies the following criteria for the Bureau to consider when making the determination that the applicant has successfully completed the criminal sentence has made a showing of rehabilitation: (1) the nature and severity of the crime(s); (2) the

length(s) of the applicable parole or probation period(s); (3) the extent to which the applicable parole or probation period was shortened or lengthened, and the reason(s) the period was modified; (4) the terms or conditions of parole or probation and the extent to which they bear on the applicant, licensee, or petitioner's rehabilitation; and (5) the extent to which the terms or conditions of parole or probation were modified, and the reason(s) for modification. The criteria are necessary to assist the Bureau in evaluating rehabilitation. Since the purpose of evaluating an applicant, licensee, or petitioner's rehabilitation is to determine whether they are sufficiently reformed to be licensed, each of these criteria would provide to the Bureau information specific to the criminal sentence and terms or conditions of parole or probation. In addition, to provide uniformity with other DCA boards, the proposed criteria were adopted by the Bureau pursuant to DCA's recommended rehabilitation criteria.

The Bureau will consider the nature and severity of the crime, because this is the offense against which the applicant, licensee, or petitioner's rehabilitative efforts will be evaluated.

The Bureau will consider the length of the applicable parole or probation period, because the length of time that the applicant, licensee, or petitioner served probation or parole without a violation is indicative of the seriousness of the offense and is relevant to whether they are rehabilitated and will comply with licensure requirements in the future.

The Bureau will consider the extent to which the parole or probation period was shortened or lengthened, and the reason for any modification, because such periods can be shortened or lengthened for good or bad conduct, and this may bear on whether the applicant is sufficiently rehabilitated.

The Bureau will consider the terms or conditions of parole or probation and the extent to which they bear on the applicant, licensee, or petitioner's rehabilitation, because the actual parole or probation terms can inform the Bureau on whether the applicant is rehabilitated. Circumstances surrounding the crime are reflected in the parameters of someone's probation or parole and can be indicative of the seriousness of the offense and the likelihood that the individual will comply with the law.

The Bureau will consider the extent to which the terms or conditions of parole or probation were modified and the reason for modification, because this may be relevant to the Bureau's determination. For instance, if correctional authorities removed terms of parole or probation due to the applicant's good behavior, this would bear on the Bureau's evaluation of the applicant's rehabilitation and willingness to conform to the rules of licensure. A demonstration of good behavior and compliance with the conditions of parole or probation may translate into the ability and willingness to comply with rules and laws within the Bureau's jurisdiction, which is crucial to the health, safety, and welfare of the public.

Amend section 602.1(b)

Purpose: The purpose of amending section 602.1(b) is to comply with the requirements of AB 2138 and BPC section 482, which requires the Bureau to consider whether an applicant or licensee has made a showing of rehabilitation if: (1) the applicant has completed the criminal sentence at issue without a violation of parole or probation; or (2) the board, applying its criteria for rehabilitation, finds that the applicant is rehabilitated. As AB 2138 does not prescribe rehabilitation criteria, the proposal also provides a specific list of criteria for the Bureau to consider for applicants, licensees, or petitioners, which is not limited to the applicable parole or probation. This proposal is intended to provide predictability in the application process and uniformity of rehabilitation criteria with other boards under DCA.

Anticipated Benefit: The proposed revisions to section 602.1(b) would provide transparency and clarity to applicants, licensees, and petitioners who have not completed their criminal sentence without a violation of parole or probation or otherwise do not qualify for consideration under subdivision (a). Providing the list of rehabilitation criteria would help them understand the facts and documents to present to the Bureau to demonstrate rehabilitation. The proposal would also assist relevant parties to any administrative appeal (e.g., the Deputy Attorney General, the Administrative Law Judge, and the applicant's counsel) in advocating for or against, or deciding upon, applicants, licensees, or petitioners who do not qualify for consideration under subsection (a), by listing rehabilitation criteria applicable to the applicant.

Necessity: Existing law required boards to develop criteria to evaluate rehabilitation when considering the denial, suspension, or revocation of a license based on a conviction, acts of dishonesty, fraud, or deceit, or acts that would be grounds for discipline, and to consider evidence of rehabilitation in making such decisions.

Operative July 1, 2020, BPC section 480 will prohibit the Bureau from denying a license on the basis that the applicant was convicted of a crime, or on the basis of the facts underlying a conviction, if the applicant "made a showing of rehabilitation pursuant to Section 482." In deciding whether to deny a license based on a conviction, the Bureau must consider evidence of the applicant's rehabilitation, pursuant to the process established in the Practice Acts, or its regulations, and as directed under BPC section 482.

To implement AB 2138, it is necessary for the Bureau to revise its regulations that establish criteria for evaluating rehabilitation. The Bureau must also decide whether an applicant, licensee, or petitioner "made a showing of rehabilitation," if the Bureau finds, in applying its rehabilitation criteria, that the applicant is rehabilitated.

Unlike the substantial relationship criteria, AB 2138 does not prescribe rehabilitation criteria that the Bureau must consider. The extent to which a person complied with the terms of parole or probation is already a factor boards often consider when evaluating

rehabilitation, and it is currently considered by the Bureau in evaluating rehabilitation. Under AB 2138, the Bureau must now consider whether an applicant who has complied with the terms of parole or probation made a showing of rehabilitation sufficient for licensure, even without considering other standard rehabilitation criteria. If, however, the applicant did not comply with the terms of parole or probation, the Bureau would apply its standard rehabilitation criteria, as modified in this proposal.

The proposal makes minor, non-substantive, revisions to the current rehabilitation criteria. Each of these criteria are designed to focus the Bureau's evaluation of facts and circumstances relevant to rehabilitation, so that the Bureau knows the relevant criteria it must review to make the determination of rehabilitation.

Section 602.1 is not limited to the denial of an application (applicant), rather, the criteria listed under 602.1 is applicable to the suspension, revocation, or reinstatement of a license as well (licensee, petitioner). As such, the addition of "suspension, revocation, or reinstatement" and "licensee or petitioner" provides clarity for applicants and licensees regarding the applicability of the section. These changes have been made to criteria 1, 2, 4, and 5.

The Bureau will also consider evidence of acts or crimes committed after the act or crime that is the basis for the Bureau's decision. Such acts or crimes typically reflect additional misconduct by the applicant, licensee, or petitioner and bear on the Bureau's decision regarding whether they are sufficiently rehabilitated to be licensed and conform to the requirements of licensure. The Bureau proposes amending "evidence of any act(s) committed subsequent..." to "evidence of any act(s) or crime(s) committed subsequent..." to make the regulation internally consistent. Further, the Bureau proposes amending "...grounds for denial which could also be considered as grounds for denial under Section 480..." to "...grounds for denial, suspension, revocation, or reinstatement" to conform to the expanded regulation.

The Bureau will also consider the criteria in subdivision (a). This is necessary to ensure that all applicants, licensees, and petitioners convicted of a crime have the opportunity to be evaluated under the same set of rehabilitation criteria. For applicants, licensees, or petitioners that completed their criminal parole or probation without a violation, the Bureau would first evaluate their eligibility for licensure under the criteria in subdivision (a). If they did not demonstrate sufficient rehabilitation under the criteria in subdivision (a), the Bureau would apply the broader criteria in subdivision (b). This way, similarly-situated applicants, licensees, and petitioners have the benefit of the same set of criteria.

The Bureau will also consider evidence of the licensee's total criminal record. It is necessary for the Bureau to consider the applicant, licensee, or petitioner's total criminal record because additional prior or subsequent misconduct is relevant to the Bureau's decision regarding whether they are sufficiently rehabilitated to be licensed and their willingness to conform to the requirements of licensure. Pursuant to BPC section 480

(operative July 1, 2020), conviction based denials must meet one of three conditions, as follows: 1) convicted of a substantially related crime within the preceding seven years of the date of application; or 2) convicted of a serious felony (per PC section 1192.7), or a crime for which PC 290(d)(2) or (3) registration is required (no time limitation).

While BPC section 480 requires that one of the conditions be met for the Bureau to deny an application based on conviction history, it does not prohibit the Bureau from considering other criminal conviction history once either of those conditions are met for the purpose of evaluating rehabilitation. The Bureau, in addition to identifying specific conviction(s) that would subject an applicant to denial, must also determine if the total criminal history (i.e., lengthy pattern of criminality) may be cause for the Bureau require a more significant demonstration of rehabilitation in both time, and actions by the applicant or license.

Business Impact and Economic Impact Assessment

AB 2138 and the proposed regulations affect Bureau licensees, registrants, and applicants with past criminal convictions or disciplinary action(s) because they seek to reduce barriers to licensure with the Bureau if the individual can present evidence of rehabilitation.

The Bureau currently provides licensure to approximately 333,504 licensees, registrants, and permit/certificate holders in the state.

This proposal may create and will not eliminate any jobs because it seeks to reduce barriers to licensure for applicants with criminal or disciplinary history. It could create jobs to the extent additional individuals can become licensed.

This proposal may create new businesses and will not eliminate existing businesses to the extent that additional individuals who become licensed may choose to start their own company or small business. The total number of businesses affected or what percentage of these businesses may be small businesses is unknown. Since the purpose of these regulations is to reduce barriers to licensure, and lower barriers may increase individuals seeking to become licensed to be successful, there may be additional licensed persons available for hire. The Bureau considers that this would be advantageous to businesses and thus not have a significant adverse economic impact on businesses.

This proposal may benefit the health and welfare of California residents because, by reducing barriers to licensure, it will create an opportunity for employment for people who have been convicted of a crime and are able to make a showing of rehabilitation and will benefit consumers who may have greater access to licensed or registered professionals.

This proposal will not affect worker safety because the proposal does not

involve worker safety.

This proposal will not affect the state's environment because it does not involve environmental issues.

The Bureau anticipates that there may be an increased cost of the state as a result of adopting and amending the sections identified in the regulatory proposal. By further defining the substantial relationship and rehabilitation criteria for criminal convictions, Bureau staff may see an increased workload to research convictions and to substantiate that rehabilitation has been achieved. Any workload and costs are anticipated to be minor and absorbable within existing resources.

The Bureau does not anticipate an increase in initial license applications approved per year because the current license review and approval process is already consistent with the proposed regulations. As a result, the proposed regulations are not anticipated to increase licensing and/or enforcement costs related to any expansion of the licensee population.

While the costs for implementing the instant regulations are estimated to be minor and absorbable, the Bureau estimates costs to implement the provisions of AB 2138 will result from the workload to obtain criminal history information either from the applicant or from local county courthouses. Staff will be required to contact the counties for this information, as well as paying any associated costs for such documents.

The Bureau anticipates costs of \$150,000 in 2020-21 and \$142,000 annually thereafter that might necessitate hiring 1.0 Associate Governmental Program Analyst to help to implement the provisions of AB 2138.

In the event the proposed regulations increase the number of licensees, the Bureau's application, license, and registration fee revenue will also increase. However, the Bureau anticipates any fee revenue increase to be minimal.

Underlying Data

- Assembly Bill (AB) 2138 (Chiu, Chapter 995, Statutes of 2018)
- August 27, 2018 – AB 2138 Senate Floor Analyses
- Bureau of Security and Investigative Services' Sunset Review Report, 2018

Specific Technologies or Equipment

This regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives

No reasonable alternative to the regulatory proposal would be either more effective in

carrying out the purpose for which the action is proposed or would be as effective or less burdensome to affected private persons and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific.

Set forth below are the alternatives which were considered and the reasons each alternative was rejected:

Alternative No. 1: Do not pursue regulations. This is not reasonable because the Bureau must incorporate and make specific the mandates of AB 2138. This proposal will allow the Bureau to communicate criteria and considerations the Bureau makes when considering the denial, suspension, or revocation of a license, thus increasing clarity, transparency, and consistency in the Bureau's business practices. It is also possible that increased transparency will encourage individuals to apply for professional licenses regulated by the Bureau, which is consistent with the intent of AB 2138.