

BUREAU OF SECURITY AND INVESTIGATIVE SERVICES

FINAL STATEMENT OF REASONS

Effective Date

The Bureau of Security and Investigative Services (Bureau) requests that this regulatory proposal become effective upon filing to align as closely as possible with the statutory implementation date of July 1, 2020, in Assembly Bill (AB) 2138 (Chiu, Chapter 995, Statutes of 2018). AB 2138 changed a policy of automatic denials of licensure for individuals with criminal convictions. These regulations make clear the Bureau's statutory commitment to providing an opportunity for a "second chance" and explain how the Bureau will individually examine each licensure, renewal, or reinstatement decision for individuals with a criminal conviction. Further, they clarify to the public how the Bureau will decide which convictions are substantially related to licensure. As noted by the public comments received and discussed herein, these regulations would benefit all Californians, both those given a "second chance" for licensure and those that could employ or receive services from them. Further, allowing for licensure and employment could potentially reduce recidivism as well as provide Californians with greater choices in licensees. Therefore, it would be of public benefit to hasten the effective date of these regulations.

Subject Matter of Proposed Regulations: Substantial Relationship Criteria and 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)

Updated Information

The Informative Digest and Initial Statement of Reasons are included in the rulemaking file and incorporated as if set forth herein.

The information contained therein is updated as follows:

On June 22, 2020, the Bureau provided 15 days' notice of modified text. Below are the modifications that were made to the text.

Section 602

- A. Insertion in subdivision (a) of “,” after “141”, and deletion of “or.”

Because the Bureau is proposing to add the Code sections enumerated in B., infra, it proposes to add a comma after “141”, and eliminate “or” since the amendment outlined in B. creates an additional list item.

B. Insertion in subdivision (a) of “Sections 6980.71(b), 6980.73(a), 6980.74(a)(4), 7510.1(d), 7583.21, or 7591.10(a) of the Code.”

The cited sections refer to grounds for denial/discipline listed in the Bureau’s practice acts for "substantially related" offenses. It is proposed to be added here so that references to substantial relationship are addressed together in one regulation. This amendment will add clarity to this subdivision.

Section 602.1

A. Deletion in subdivision (a) of “8, 8.5, 11,” and “or 11.6.”

The Bureau proposes to delete “8” because Chapter 8 of Division 3 of the Business and Professions Code has been repealed.

Section 602.1 generally prescribes criteria for rehabilitation. To date, it has purported to apply to denials, suspensions, revocations, and reinstatements with respect to licensees governed by Chapters 8, 8.5, 11, 11.3, 11.4, 11.5, and 11.6. However, because there are already rehabilitation criteria in statute for locksmiths (Chapter 8.5), repossessioners (Chapter 11), and alarm companies (Chapter 11.6), which AB 2138 did not amend, the Bureau proposes to delete reference to these Chapters in the revised regulation.

B. Deletion in subdivision (a) of “was” and insertion of “has been.”

The Bureau proposes to delete “was” and replace it with “has been” because “has been” is used to refer to something which started in the past and is still continued in the present tense. “Was,” on the other hand, is used to refer to some action which was going on at some time in the past. The Bureau prefers to use “has been” to include the present tense so the relevant time period for a conviction includes up to the present.

C. Deletion in subdivision (a) and (b) of “and is presently eligible for a license.”

The Bureau proposes to delete this phrase from subdivisions (a) and (b) of section 602.1 because “eligible” could be seen as referring to other eligibility requirements for licensure, rather than referring to fitness or suitability for licensure. Deletion of this phrase will clarify the regulation.

D. Deletion in subdivision (b)(7) of “-“ and insertion of “through.”

The Bureau proposes this amendment to lend greater clarity to the subdivision.

The Bureau provided 15 days’ notice of these modifications to the public for comment. One comment was received.

- E. Addition of comma after “11.”
- F. Addition of “or” after “11.4.”
- G. Addition of comma between “488” and “490.”

The Bureau made these modifications to the final text for grammatical correctness.

After consultation with the Office of Administrative Law, the Bureau made further modifications to the text for clarity and consistency within the regulations. The Bureau provided 15 days’ notice thereof from April 12, 2021 through April 27, 2021. These modifications are summarized below.

1. Section 602

- a. Subdivision (a): Addition of “or,” “7564.1(c)(3),” and “professional misconduct.”

Subdivision (a) of section 602 was revised to insert a reference to BPC section 7564.1(c)(3) to refer to additional grounds for denial/discipline listed in the Bureau’s practice acts for “substantially related” offenses. It is proposed to be added here so that references to substantial relationship are addressed together in one regulation. Additionally, the reference to ‘professional misconduct’ was added to align with the terminology used in statute.

- b. Authority cited: Deletion of section 6980.71.

The Bureau deleted section 6980.71 from authority as it determined that this section was not properly cited as authority for the regulation.

- c. Reference: Deletion of sections 475, 6980.45, 7501.8, 7503.5, 7504.1, 7506.8, 7538, 7574.15, 7561.1, 7587.1, 7582.24, 7561.4, 7599.61, and addition of section 7564.1.

The Bureau deleted BPC sections 475, 6980.45, 7501.8, 7503.5, 7504.1, 7506.8, 7538, 7574.15, 7561.1, 7587.1, 7582.24, 7561.4, 7599.61 from the reference section as it determined these sections were not properly cited as references for the regulation. The Bureau added BPC section 7564.1 to the reference section of the regulation because it added this section to subdivision (a) of the regulation.

2. Section 602.1

- a. Subdivision (a):
 - i. Addition of “8.5,” “11,” and “11.6.”

The Bureau added these chapters back to subdivision (a) as the regulation governs the

denial, suspension, revocation or reinstatement of licenses for which application has been made under these chapters of the Business and Professions Code.

- ii. Deletion of “provides evidence of completion of” and addition of “completes.”

The Bureau amended this language to make it consistent with language used in regulations promulgated by other boards and bureaus pursuant to AB 2138.

- b. Subdivision (b): Addition of “If the applicant, licensee, or petitioner has not completed the criminal sentence at issue without a violation of parole or probation, the Bureau determines that the applicant, licensee, or petitioner did not make a showing of rehabilitation based on the criteria in subdivision (a), the denial, suspension, revocation, or reinstatement is based on professional misconduct, or the denial, suspensions, revocation, or reinstatement is based on one or more of the grounds specified in Sections 6980.45, 6980.47, 6980.71, 6980.73, 6980.74, 7503.5, 7504.1, 7505.3, 7506.8, 7506.14, 7507, 7510.1, 7538, 7538.5, 7561.1, 7561.3, 7561.4, 7564.1, 7574.15, 7574.31, 7582.19, 7582.23, 7582.24, 7582.25, 7583.15, 7583.16, 7583.21, 7583.42, 7587.1, 7587.3, 7587.4, 7591.8, 7591.10, 7598.12, 7599.32, and 7599.61 of the Code, the Bureau shall apply the following criteria in evaluating an applicant, licensee, or petitioner’s rehabilitation” and deletion of “If subdivision (a) is inapplicable, or the bureau determines that the applicant, licensee, or petitioner did not make the showing of rehabilitation based on the criteria in subdivision (a), the bureau shall apply the following criteria in evaluating an applicant, licensee, or petitioner’s rehabilitation. The bureau shall find that the applicant, licensee, or petitioner made a showing of rehabilitation and is presently eligible for a license if, after considering the following criteria, the bureau finds that the applicant, licensee, or petitioner is rehabilitated.”

The Bureau amended this language to make it consistent with language used in regulations promulgated by other boards and bureaus pursuant to AB 2138.

- c. Subdivisions (b)(1), (b)(2), and (b)(3): Addition of “professional misconduct.”

The Bureau added “professional misconduct” to these subdivisions for consistency because the term is used in subdivision (b).

- d. Subdivision (b)(4): Deletion of “The extent to which” and addition of “Whether,” and “licensee, or petitioner.”

The Bureau amended this language to make it consistent with language used in regulations promulgated by other boards and bureaus pursuant to AB 2138.

- e. Authority cited: Addition of sections 481 and 6980.7.

The Bureau added BPC sections 481 and 6980.7 because these sections authorize the Bureau to promulgate the regulation.

- f. Reference: Deletion of sections 7526.1 and 7593.16 and addition of sections 6980.47, 7505.3, 7506.14, 7507, 7538, 7538.5, 7561.3, 7564.1, 7574.31, 7582.19, 7582.23, 7582.25, 7583.15, 7583.16, 7583.42, 7587.3, 7587.4, 7591.8, 7598.12, and 7599.32.

The Bureau deleted BPC sections 7526.1 and 7593.16 because these statutes were not properly cited as references for the regulation.

The Bureau added sections 6980.47, 7505.3, 7506.14, 7507, 7538, 7538.5, 7561.3, 7564.1, 7574.31, 7582.19, 7582.23, 7582.25, 7583.15, 7583.16, 7583.42, 7587.3, 7587.4, 7591.8, 7598.12, and 7599.32 to the reference section because it added these sections to subdivision (b) of the regulation.

The Bureau did not receive any public comments during this notice period.

Local Mandate

A mandate is not imposed on local agencies or school districts.

Objections or Recommendations/Responses

Summary of Comments Received During the 45-day Comment Period

- A. On April 20, 2020, the Bureau received a joint letter from A New Way of Life Reentry Project, Center for Employment Opportunities, Center for Living and Learning, Community Legal Services in East Palo Alto, East Bay Community Law Center, Legal Aid at Work, Legal Services for Prisoners with Children, All of Us or None, Los Angeles Regional Reentry Project, National Association of Social Workers, California Chapter, REDF, The Record Clearance Project, San Jose State University, Root and Rebound, and Rubicon Programs on the Bureau's proposed regulations implementing Assembly Bill (AB) 2138. Below are the Bureau's responses to the comments made therein.

Comment 1A

Comment Summary:

This comment states that the proposed regulations leave some gaps in the regulatory scheme pursuant to the changes to Business and Professions Code (BPC) section 480, 481, 482, and 493 as modified by AB 2138. The comment states that the proposed regulations fail to fully implement these statutes. Additionally, the comment states that the proposed regulations fall short of the intent of the bill, which includes combating discrimination against people with records who have demonstrated rehabilitation and seek to establish themselves professionally.

Response:

The Bureau rejects this comment. The purpose of the proposed regulations is to clarify substantial relationship criteria and criteria for rehabilitation, as required by AB 2138. (BPC, § 481.) Consistent with the requirements enacted by AB 2138, these regulations would adopt all of the following criteria, which would assist Bureau in implementing a balanced approach to evaluating an applicant’s eligibility for licensure:

1. The nature and gravity of the offense.
2. The number of years elapsed since the date of the offense.
3. The nature and duties of the profession in which the applicant seeks licensure or in which the licensee is licensed.

Clarifying how to determine whether a crime is substantially related and clarifying the factors that will be considered when evaluating rehabilitation should assist applicants and licensees with demonstrating their rehabilitation.

Accordingly, the Bureau is making no changes to the proposed regulations in response to this comment.

Comment 2A

Comment Summary:

The regulations do not comply with AB 2138 because proposed section 602 states that “a crime or act shall be considered to be substantially related” but AB 2138 provides that only convictions within the preceding 7 years, serious felony convictions under Penal Code section 1192.7, and felony financial crimes for certain Boards may be considered when denying a license. Acts underlying a conviction or acts that did not result in formal discipline may not be considered when denying a license.

Response:

The Bureau rejects this comment. This comment is quoting BPC section 480, effective July 1, 2020. Section 480(a) outlines conditions under which boards can deny an applicant a license, including that the applicant must have been convicted of a crime within the preceding seven years that is substantially related to the qualifications,

functions, or duties of the business or profession for which the application is made, subject to the limitations in subdivisions (a)(1)(A) and (B). (BPC, § 480, subd. (a)(1).)

Proposed section 602 is consistent with section 480. It states the criteria that are relevant to determining whether a crime is substantially related to the qualifications, functions, or duties of the professions regulated by the Bureau for the purpose of denial of a license, as prescribed by section 480(a)(1).

Accordingly, the Bureau is making no changes to the proposed regulations in response to this comment.

Comment 3A

Comment Summary:

The regulations do not comply with AB 2138 because section 602.1 focuses heavily on the underlying circumstances and criminal history. Rehabilitation can and does take many forms that the current language does not fully embrace. The comment refers the reader to Comment 8 below for examples of rehabilitation to expand the regulations.

Response:

As addressed more fully in the Bureau's response to Comment 8, section 602.1(b)(5) permits the applicant to offer evidence of rehabilitation that can encompass any of the forms of rehabilitation proposed in the letter. Accordingly, the Bureau believes that the proposed language is consistent with legislative intent.

Therefore, the Bureau is making no changes to the proposed regulations in response to this comment.

Comment 4A

Comment Summary:

This comment requests the proposed language include a "7-year washout period" for consideration of convictions or discipline which are not statutorily considered serious felonies under Penal Code section 1192.7 or felony financial crimes when a person is applying to be a private investigator. (BPC, § 480, subd. (a)(1), effective July 1, 2020.)

Response:

The Bureau rejects this comment. Regulations should not indiscriminately incorporate statutory language. (Gov. Code, § 11349, subd. (f).)

The seven-year period during which a bureau can deny a license for a conviction or

formal discipline is fully described in BPC section 480(a)(1)(A) and (B), effective July 1, 2020. As this is already included in statute, adding this provision is duplicative of section 480(a)(1). Therefore, it is not necessary to repeat it in the regulations.

Accordingly, the Bureau is making no changes to the regulations in response to this comment.

Comment 5A

Comment Summary:

This comment states that the regulations should provide that a person with a criminal history shall not be denied a license if the applicant has obtained a certificate of rehabilitation, dismissal per Penal Code section 1203.4, 1203.4a, 1203.41, or 1203.42, or an arrest which led to an infraction/citation or a disposition other than a conviction, or juvenile adjudication. (BPC, § 480, subds. (b)-(d).)

Response:

The Bureau rejects this comment. Regulations should not indiscriminately incorporate statutory language. (Gov. Code, § 11349, subd. (f).) BPC section 480(c), effective July 1, 2020, already states that a license may not be denied based on a conviction, or on the basis of the underlying acts, if it has been dismissed pursuant to Penal Code sections 1203.4, 1203.4a, 1203.41, 1203.42, or 1203.425, or otherwise dismissed or expunged. In addition, BPC section 480(b), effective July 1, 2020, prohibits license denial if the applicant has obtained a certificate of rehabilitation, was granted clemency or a pardon, or has made a showing of rehabilitation per BPC section 482. BPC section 480(d), effective July 1, 2020, prohibits license denial based on an arrest that resulted in something other than a conviction, such as an infraction, citation, or juvenile adjudication. Since these provisions are already specifically addressed in statute, adding them again in regulation would be duplicative.

Accordingly, the Bureau is making no changes to the regulations in response to this comment.

Comment 6A

Comment Summary:

This comment states that the regulations fail to state that the Bureau shall not require an applicant to disclose any information or documentation regarding the applicant's criminal history. (BPC, § 480, subd. (f)(2).)

Response:

The Bureau rejects this comment. Section 480(f)(2), effective July 1, 2020, provides that a board cannot require an applicant for licensure to disclose any information or documentation regarding the applicant's criminal history. As this is already provided by statute, adding this provision is duplicative of section 480(f)(2). Therefore, it is not necessary to repeat it in the regulations.

Accordingly, the Bureau is making no changes to the proposed regulations in response to this comment.

Comment 7A

Comment Summary:

This comment states that the proposed language fails to include that the Bureau must notify the applicant in writing if the applicant is denied a license or is disqualified from licensure. The comment states that the Bureau must provide procedures describing the process for an applicant to challenge a decision or request consideration, a procedure stating that the applicant has a right to appeal the Bureau's decision, and provide a process for requesting a complete conviction history. (BPC, § 480, subd. (f)(3).)

Response:

The Bureau rejects this comment. BPC sections 480(f)(3), 485 through 487, and the Administrative Procedure Act, at Government Code section 11500, *et seq.*, already contain these requirements, including requirements for providing the legal and factual basis for the denial, service of the denial on the applicant, and notice to the applicant regarding the opportunity to request a hearing to challenge the decision. Restating these requirements would be duplicative of the statutes. (Gov. Code, § 11349, subd. (f).)

Accordingly, the Bureau is making no changes to the regulations in response to this comment.

Comment 8A

Comment Summary:

This comment states that the intent of AB 2138 was not to incorporate mere probation or parole reports into the occupational licensing determinations. The letter states that rehabilitation can and does take many forms that extend beyond law enforcement supervision. Therefore, the letter recommends that the Bureau consider adding the following rehabilitation criteria:

- Volunteer service;
- Successful employment in a related field;

- A history of work experience in an employment social enterprise.
- Unpaid work in the community;
- Furthered education;
- Abstinence from controlled substances and/or alcohol;
- Stability of family life, fulfillment of parental and familial responsibilities;
- New and different social and business relationships from those which existed at the time of the underlying charges at issue;
- Change in attitude of the applicant as evidenced by:
 - Personal testimony,
 - Evidence of rehabilitation submitted by the applicant,
 - Evidence from family, friends, and/or other persons familiar with the applicant's previous behavior patterns and subsequent attitude and behavioral changes; and
- Other markers of rehabilitation.

Response:

The Bureau rejects this comment. BPC section 482, effective July 1, 2020, requires boards to develop criteria to evaluate rehabilitation and to consider whether an applicant or licensee has made a showing of rehabilitation if either the criminal sentence has been completed without violation of probation or parole, or if the board otherwise finds the applicant rehabilitated.

The final text for proposed section 602.1 articulates a two-step process for evaluating rehabilitation:

1. First, the Bureau must determine if the completion of the criminal sentence with no violations constitutes rehabilitation. Consistent with the direction in AB 2138, to consider rehabilitation if an applicant completes the criminal sentence at issue without a violation of parole or probation, specific criteria are being added to section 602.1(a) to help the Bureau determine whether sentence completion demonstrates rehabilitation. Criteria include the nature and severity of the crime(s), the length(s) of the applicable parole or probation period(s), the extent to which the applicable parole or probation period was shortened or lengthened, and the reason(s) the period was modified, the terms and conditions of parole or probation and the extent to which they bear on the applicant, licensee, or petitioner's rehabilitation, and the extent to which the terms or conditions of parole or probation were modified, and the reason(s) for modification. If the Bureau finds rehabilitation, no further information needs to be provided.
2. The second step, if rehabilitation is not demonstrated based on sentence completion, requires the Bureau consider certain other criteria to evaluate rehabilitation. A general category permitting submission of any rehabilitation evidence allows an applicant to offer evidence relating to the proposed categories suggested above. As the Bureau can and already does give serious consideration

to these factors when considering whether an applicant, licensee, or petitioner is rehabilitated, the Bureau believes that the proposed language is consistent with legislative intent.

Accordingly, the Bureau is making no changes to the regulations in response to this comment.

Comment 9A

Comment Summary:

The comment states that the proposed regulations fail to state the requirements set forth in BPC section 480(g)(2), effective July 1, 2020, including, that a board retain the number of applicants with a criminal record who received notice of denial or disqualification of licensure, the number of applicants with a criminal record who provided evidence of mitigation or rehabilitation, and the final disposition and demographic information.

Response:

The Bureau rejects this comment. These requirements are already set forth in statute. (BPC, § 480, subd. (g)(2), effective July 1, 2020.) Stating them in regulation would be duplicative of the statute. (Gov. Code, § 11349, subd. (f).)

Accordingly, the Bureau is making no changes to the regulations in response to this comment.

- B. On April 28, 2020, the Bureau received an email from Bruce J. Schryver, Licensed Private Investigator, on the Bureau's proposed regulations implementing AB 2138. Below are the Bureau's responses to the comments made therein.

Comment 1B

Comment Summary:

The comment states the proposed regulations are ambiguous in terms of license types affected and crimes considered when considering the denial of a license. Further, the comment requests clarification if applicants with criminal backgrounds will be approved for licensure.

Response:

The Bureau rejects this comment. The purpose of the proposed regulations are to implement, interpret, and make specific the mandates of BPC sections 481 and 482, as

amended by AB 2138. These BPC sections fall under the general provisions of the BPC and are applicable to all license types regulated by the Bureau. Further, each of the Practice Acts regulated by the Bureau can be identified in the reference section of the proposed text.

When making a licensing determination, the Bureau can consider crimes committed within the preceding seven years that are substantially related to the qualifications, functions, and duties of the profession for which the application is made (BPC, §§ 480, 481). While BPC section 480 does not provide a list of crimes that may be considered, it does state that the seven-year washout period does not apply to serious felonies, crimes for which registration is required pursuant to Penal Code section 290, or financial crimes (note: the financial crime exemption only applies to private investigators).

Under current law, every applicant with a criminal background is evaluated for fitness for licensure and applications are approved or denied on a case by case basis. The proposed regulatory text is not intended to establish a list of crimes for consideration in the application process, rather, to establish substantially related criteria and criteria for evaluating rehabilitation, as mandated by AB 2138. (BPC, §§ 481, 482.)

Further, the comment does not suggest any specific changes to the proposed language.

Accordingly, the Bureau is making no changes to the proposed regulations in response to this comment.

Comment 2B

Comment Summary:

The comment states concern surrounding professional licenses being issued to individuals with a criminal past.

Response:

The Bureau rejects this comment. Under current law, every applicant with a criminal background is evaluated for fitness for licensure and applications are approved or denied on a case by case basis. The proposed regulations do not change the fact that an applicant with a criminal past may be approved for licensure.

Further, the comment does not suggest any specific changes to the proposed language.

Accordingly, the Bureau is making no changes to the proposed regulations in response to this comment.

Comment 3B

Comment Summary:

The comment inquires whether the State of California will indemnify the licensee or entity that hires a licensee believing the licensee has been vetted by the state. Additionally, the comment inquires whether the state will hide licensees' past criminal history, thus requiring hiring entities to conduct their own background checks.

Response:

The Bureau rejects this comment. This comment is beyond the scope of this rulemaking proposal.

Under current law, every applicant with a criminal background is evaluated for fitness for licensure and applications are approved or denied on a case by case basis. The Bureau is prohibited from releasing an individual's Criminal Offender Record Information to the public. Additionally, the proposed regulations do not change the fact that an applicant with a criminal past may be approved for licensure.

Further, the comment does not suggest any specific changes to the proposed language.

Accordingly, the Bureau is making no changes to the proposed regulations in response to this comment.

Comment 4B

Comment Summary:

The comment states the belief that individuals with criminal history should be afforded opportunity to continue on a law-abiding life but questions if professional licensure is appropriate for people with a criminal past.

Response:

The Bureau rejects this comment. The purpose of the proposed regulatory text is to implement, interpret, and make specific the mandates of BPC sections 481 and 482, as amended by AB 2138. Specifically, the purpose of the proposed text is to establish substantially related criteria and criteria for evaluating rehabilitation. BPC section 480 restricts the Bureau's autonomy in denying an application based on an applicant's criminal past. Concerns with statute(s) should be brought to the attention of the California Legislature.

Further, the comment does not suggest any specific changes to the proposed language.

Accordingly, the Bureau is making no changes to the proposed regulations in response to this comment.

Summary of Comments Received During the 15-day First Modified Text Period

- A. On June 22, 2020, the Bureau received an email from Bernard Cane on the Bureau's Modified Text implementing AB 2138. Below are the Bureau's responses to the comments made therein.

Comment 1A

Comment Summary:

The comment states the belief that once an individual is convicted of certain types of offenses, they cannot be expected to be reliable or fit for licensure in the private investigator industry. The comment states the belief that the regulations should be stricter, rather than looser, to hold licensees to a higher standard.

Response:

The Bureau rejects this comment. The purpose of the proposed regulatory text is to implement, interpret, and make specific the mandates of BPC sections 481 and 482, as amended by AB 2138. Specifically, the purpose of the proposed text is to establish substantially related criteria and criteria for evaluating rehabilitation. BPC section 480 restricts the Bureau's autonomy in denying an application based on an applicant's criminal past. Concerns with statute(s) should be brought to the attention of the California Legislature.

Further, under current law, every applicant with a criminal background is evaluated for fitness for licensure and applications are approved or denied on a case by case basis. The proposed regulations do not change the fact that an applicant with a criminal past may be approved for licensure.

Lastly, the comment does not suggest any specific changes to the modified text.

Accordingly, the Bureau is making no changes to the proposed regulations in response to this comment.

Comment 2A

Comment Summary:

The comment states the belief that private investigators should have untethered access to records in the scope of conducting business in order to better serve the public.

Response:

The Bureau rejects this comment. This comment is beyond the scope of this rulemaking proposal and does not suggest specific changes to the modified text.

Accordingly, the Bureau is making no changes to the proposed regulations in response to this comment.

- B. On July 13, 2020, the Bureau received an email from Steve Egesdal on the Bureau's Modified Text implementing AB 2138. Below are the Bureau's responses to the comments made therein.

Comment Summary:

The comment states opposition to the AB 2138 statutory scheme and the proposed regulatory language based on the belief that a security officer with a criminal background should not hold a position of trust within the community. The comment states the belief that individuals convicted of specified crimes, even when rehabilitated, would be tempted to reoffend and make the security industry look bad. The comment asserts that the Bureau should impose strict guidelines as to what convictions disqualify an applicant and the security industry is already struggling with personnel issues and qualified applicants for both armed and unarmed security officers.

Response:

The Bureau rejects this comment. The Bureau incorporates the responses to 15-Day Comment 1A, above, into this response. To the extent this comment is directed toward the passage of AB 2138, comments regarding the merit of AB 2138 should be directed to the Legislature. Proposed section 602.1 sets forth criteria the Bureau must consider in determining whether an applicant is rehabilitated after conviction of a crime. The regulation authorizes the Bureau to consider the nature and severity of the crime(s) among other factors in determining whether an applicant should receive a license.

The comment does not suggest any specific changes to the proposed language.

Accordingly, the Bureau is making no changes to the proposed regulations in response to this comment.

Consideration of Alternatives

No reasonable alternative which was considered or that has otherwise been identified and brought to the attention of the Bureau, including those raised in the public comments, would be more effective in carrying out the purpose for which the regulations were proposed or would be as effective and less burdensome to affected private

persons than the adopted regulations or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. As discussed in the Bureau's responses to comments, no alternatives were brought to the Bureau's attention that would have protected consumers as effectively as the provisions proposed in these regulations.

Nonduplication Statement - 1 CCR § 12

As stated throughout the Initial and Final Statements of Reasons, the proposed regulations partially duplicate or overlap several state statutes amended by the passage of AB 2138. In particular, AB 2138 amended Business and Professions Code sections 480 (grounds upon which a board can deny a license for applicants convicted of a crime or subject to formal discipline by a licensing board), 481 (the criteria boards can apply in determining if a crime bears a substantial relationship to the qualifications, functions or duties of the profession a board regulates), 482 (the rehabilitation criteria a board must consider when considering the denial, suspension or revocation of a license due to conviction of a crime), and 493 (the evidentiary effect of a conviction and criteria for determining if a crime has a substantial relationship to the profession). By repeating key language from these statutes within these regulations, the steps the Bureau will take, and the reasoning it will apply, the regulations become significantly clearer, and will better guide Bureau Staff, parties, administrative law judges, attorneys, and individuals with criminal convictions.

The changes made by AB 2138 and these regulations are directly applicable to individuals convicted of a crime who seek licensure, and to licensees who are convicted of a crime. As these regulations implement, interpret, and make specific how the laws amended by AB 2138 will be enforced by the Bureau, some duplication or overlap is necessary to ensure that the steps the Board must follow and the reasoning the Bureau must apply is clear and consistent with statute. The partial duplication or overlap with the statutes amended by AB 2138 are thus necessary to effectively implement the new standards in a way that satisfies the "clarity" standard of Government Code section 11349.1, subdivision (a)(3).

Economic Impact

The proposed regulations affect Bureau licensees, registrants, and applicants with past criminal convictions or disciplinary action, because it seeks 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. If more individuals who were previously unable to obtain a license or registration are able to obtain one, the pool of potential licensees and registrants may also increase.

The Bureau typically receives approximately 92,000 initial license applications per year

and denies approximately 2,400 annually. The Bureau notes current practice related to denials is already consistent with current law.

Nearly 100 percent of denied initial applications are denied due to the applicants having an egregious criminal conviction history, which may also be directly related to and/or impact job duties. As a result, the Bureau does not anticipate the proposed regulations to increase the number of initial license applications approved per year.

Fiscal Impact

The Initial Statement of Reasons and Notice and (Amended Notice) of Proposed Regulatory Action stated that the Bureau anticipated costs of \$150,000 in 2020-21 and \$142,000 annually thereafter, possibly requiring the Bureau to hire one Associate Governmental Program Analyst to help implement the provisions of AB 2138. However, this statement was focused on the impact of the AB 2138 statutory scheme on the Bureau's costs. The below more accurately states the fiscal impact on the Bureau of these regulations:

The Bureau indicates the proposed regulations are not anticipated to result in a fiscal impact to the state.

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.

Missing Information from Amended Notice of Proposed Regulatory Action (Amended Notice):

In the Amended Notice, the Bureau inadvertently omitted the following information:

Benefits of the Proposed Action:

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.