CITY OF OAKLAND
BILL ANALYSIS

Date: May 3, 2007
Bill Number: SB 1019
Bill Author: Romero

DEPARTMENT INFORMATION

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RECOMMENDED POSITION: (**SUPPORT**, SUPPORT IF AMENDED, NEUTRAL, WATCH, OPPOSE, NOT RELEVANT)

Summary of the Bill: Last year the California Supreme Court issued its decision in *Copley Press, Inc. v. Superior Court* (2006) 39 Cal.4th 1272, holding that records of administrative appeals to agencies outside the employing agency should not be open to the public under Penal Code section 832.7.

SB 1019 would amend Penal Code section 832.7 to permit charter cities to adopt an ordinance to allow civilian police review boards and other oversight agencies that operate outside of a police department to hold public hearings regarding complaints about police misconduct, as was the practice of the Citizens' Police Review Board (the "CPRB") prior to the *Copley* decision. The bill would require City Council enactment of an ordinance that finds the public hearing process was in effect prior to the *Copley* decision. In addition to allowing for public hearings by civilian police review boards and oversight agencies, this bill also permits a police department to make "not confidential" and release certain basic about police officers in sustained Internal Affairs cases where

the discipline imposed is a suspension or greater. The information deemed "not confidential" in these sustained cases includes the name, badge number, charges, allegations, factual findings, and disciplinary outcome. For cases that were not sustained, but where another government agency (police commission, civilian review board, or independent auditor) has found misconduct, the Police Chief would have the discretion to release information already released by the other agency, as well as a summary of the grounds for the department overturning the other agency's findings or not following its recommendation. Records and information that are disclosable under Section 832.7 could be obtained by the public under the California Public Records Act.

Positive Factors for Oakland: The CPRB, established by City Council Ordinance on April 15, 1980, was created to provide the public with open hearings for police misconduct complaints. The purpose of holding public hearings is to enhance community/police relations by providing the public with access to citizen complaints of police misconduct. Council has repeatedly expressed its support for such hearings. If this legislation were adopted, the CPRB could resume holding open hearings for police misconduct complaints.

In the five years prior to the *Copley* decision, the CPRB held an average of 14 hearings a year, providing the public with a window on complaints against Oakland police officers and the resolution of those complaints. Several of the cases heard in public by the CPRB raised policy issues which resulted in the Oakland Police Department changing its practices and revising its training in areas such as strip searches, landlord/tenant law and conduct toward vehicle occupants whose cars are towed as the result of police action.

Under pre-*Copley* CPRB procedures, the CPRB conducted open misconduct hearings, deliberated behind closed doors and at the conclusion of its deliberations reconvened to open session and announced its findings and recommended discipline. *Copley* required the CPRB to close its hearings. Only the complainant and officers and their representatives are permitted behind closed doors to testify and conduct cross – examination. At the conclusion of testimony, the CPRB recesses to closed deliberations and no longer announces its findings and recommended discipline when it reconvenes to open session. The complainant is notified in writing whether allegations have been sustained, not sustained, exonerated or unfounded. The subject officers are not named in the letter so the complainant is unaware of which findings were made with regard to which officers in cases involving multiple officers. Also, the written notification is limited to whether discipline was recommended; it doesn't inform the complainant of the recommended discipline.

The Berkeley City Council and the San Francisco Board of Supervisors which have faced a similar shutdown of open hearings as a result of *Copley*, have recently expressed their support for passage of AB 1648 which is a more expansive bill than SB 1019.

Negative Factors for Oakland: The Oakland Police Officers Association will likely oppose this legislation.

PLEASE RATE THE EFFECT OF THIS MEASURE ON THE CITY OF OAKLAND:

_X_ Critical (top priority for City lobbyist, city position required ASAP)
____Very Important (priority for City lobbyist, city position necessary)
____ Somewhat Important (City position desirable if time and resources are available)
____ Minimal or ____ none (do not review with City Council, position not required)

Known support: Antonio Villaraigosa, Mayor of Los Angeles; William J. Bratton, Los Angeles Chief of Police; California Newspaper Publishers Association; American Civil Liberties Union; Taxpayers for Improving Public Safety; Californians Aware; First Amendment Coalition; La Raza Centro Legal, Inc.; Mexican American Legal Defense and Educational Fund; Merrick J. Bobb, Attorney at Law (former Special Counsel, Los Angeles Police Commission); Lawyers' Committee for Civil Rights of the San Francisco Bay Area; Los Amigos of Orange County; Progressive Jewish Alliance; Coalition for Human Immigrant Rights of Los Angeles; Hunger Action Los Angeles; one individual

Known Opposition: Sheriffs Association; Association for Los Angeles Deputy Sheriffs, Inc.; Los Angeles Police Protective League; California Association of Highway Patrolmen; Peace Officers Research Association of California; California Peace Officers' Association; California Police Chiefs Association; California Narcotic Officers' Association

Attach bill text and state/federal legislative committee analysis, if available. This bill was passed out of the Senate Committee on Public Safety and forwarded to the

Senate Appropriations Committee on April 17, 2007.

Respectfully Submitted,

John Russo
City Attorney

Joyce M. Hicks
Executive Director
Citizens' Police Review Board

Approved for Forwarding to
Rules Committee

City Attorney's Office

Office of City Administrator

Attachments

Item: _____
Rules & Legislation Comte.
May 3, 2007

Attachment 1

BILL NUMBER: SB 1019 AMENDED
BILL TEXT

AMENDED IN SENATE MARCH 26, 2007

INTRODUCED BY Senator Romero

FEBRUARY 23, 2007

An act to amend Section ~~1~~ *832.7* of the Penal Code, relating to ~~crime~~ *peace officer records* .

LEGISLATIVE COUNSEL'S DIGEST

SB 1019, as amended, Romero. ~~Crime: Penal Code.~~
Peace officer records: confidentiality.

Existing law generally regulates the confidentiality of various personnel records relating to peace and custodial officers.

This bill would state the intent of the Legislature to abrogate the California Supreme Court decision in Copley Press, Inc. v. Superior Court and to restore public access to peace officer records and meetings that were open prior to the Copley Press decision.

This bill would provide that notwithstanding specified statutory provisions or the holding in Copley Press, Inc. v. Superior Court, any charter city may elect, through an ordinance duly enacted, as specified, to follow the practices it followed before the Copley Press decision with respect to the release of limited information regarding certain personnel investigations.

This bill would provide that notwithstanding the confidential nature of peace and custodial officer complaints, as specified, the employing agency may release other specified information.

This bill would specify the means by which requests for disclosure of confidential information shall be made.

By imposing additional duties on local law enforcement agencies in connection with peace and custodial officer discipline, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state,

reimbursement for those costs shall be made pursuant to these statutory provisions.
~~Existing law designates specified statutes to be known as The Penal Code of California, and is divided into four parts.~~

~~This bill would make a technical, nonsubstantive change to that provision.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ *yes* . State-mandated local program: ~~no~~ *yes* .

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 832.7 of the Penal Code is amended to read:

832.7. (a) *(1)* Peace officer or custodial officer personnel records and records maintained by any state or local agency pursuant to Section 832.5, or information obtained from these records, are confidential and shall not be disclosed in any criminal or civil proceeding except by discovery pursuant to Sections 1043 and 1046 of the Evidence Code. This section shall not apply to investigations or proceedings concerning the conduct of peace officers or custodial officers, or an agency or department that employs those officers, conducted by a grand jury, a district attorney's office, or the Attorney General's office *, civilian review boards, personnel boards, police commissions, or civil service commissions* .

(2) It is the intent of the Legislature in enacting the act amending this section to abrogate the California Supreme Court case of Copley Press, Inc. v. Superior Court (2006) 39 Cal.4th 1272, to restore public access to peace officer records, and to restore public access to meetings and hearings that were open to the public prior to the Copley Press decision.

(b) Notwithstanding subdivision (a), a department or agency shall release to the complaining party a copy of his or her own statements at the time the complaint is filed.

(c) Notwithstanding subdivision (a), a department or agency that employs peace or custodial officers may disseminate data regarding the number, type, or disposition of complaints (sustained, not sustained, exonerated, or unfounded) made against its officers if that information is in a form which does not identify the individuals involved.

(d) Notwithstanding subdivision (a), a department or agency that employs peace or custodial officers may release factual information concerning a disciplinary investigation if the officer who is the subject of the disciplinary investigation, or the officer's agent or representative, publicly makes a statement he or she knows to be false concerning the investigation or the imposition of disciplinary action. Information may not be disclosed by the peace or custodial

officer's employer unless the false statement was published by an established medium of communication, such as television, radio, or a newspaper. Disclosure of factual information by the employing agency pursuant to this subdivision is limited to facts contained in the officer's personnel file concerning the disciplinary investigation or imposition of disciplinary action that specifically refute the false statements made public by the peace or custodial officer or his or her agent or representative.

(e) Notwithstanding any provision of this chapter or the holding in Copley Press, Inc. v. Superior Court (2006) 39 Cal.4th 1272 interpreting any provision of this chapter, any charter city may elect, through an ordinance duly enacted, to follow the practices it followed before the Copley Press decision with respect to the release of limited information regarding certain personnel investigations. If a charter city so elects, the city's legislative body must find, based on the presentation of substantial evidence, that the practices to be enacted and followed were followed by the city before the Copley Press decision was final.

(f) Notwithstanding subdivision (a), with respect to each sustained complaint, charge, disciplinary matter, or internal investigation where the discipline imposed is either suspension, demotion, removal, or other separation of the peace officer from service with the department (other than by resignation), a department or agency that employs peace or custodial officers may release any of the following:

(1) The name and badge number of the subject officer.

(2) The charges brought against the officer.

(3) The discipline sought by the office.

(4) The name and current address of the complainant, unless the complainant requests it be kept confidential.

(5) The factual findings with respect to the conduct at issue.

(6) The discipline imposed or corrective action taken.

(g) Notwithstanding subdivision (a), in cases in which a civilian review board or other governmental body outside the department or agency recommends imposition of discipline or makes or recommends a finding that an officer's conduct was out of policy or that a complaint was founded, and the finding is overturned or the recommendation is not followed by the department or agency that employs the peace officer, the department or agency may, in its discretion, release any information already released by the outside body, as well as a summary of the grounds for overturning the outside body's finding or not following its recommendation.

~~(c)~~

(h) (1) The department or agency shall provide written notification to the complaining party of the disposition of the complaint within 30 days of the disposition.

(2) The notification described in this subdivision shall not be conclusive or binding or admissible as evidence in any separate or subsequent action or proceeding brought before an arbitrator, court,

or judge of this state or the United States.
~~(f)~~
(i) Nothing in this section shall affect the discovery or disclosure of information contained in a peace or custodial officer's personnel file pursuant to Section 1043 of the Evidence Code.
(j) Information disclosable pursuant to this section shall be made available upon request pursuant to Section 6250 of the Government Code and following.
SEC. 2. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.
~~SECTION 1. Section 1 of the Penal Code is amended to read:~~
~~1. This Act shall be known as, and may be cited as, The Penal Code of California, and is divided into four parts, as follows:~~

~~I.--OF CRIMES AND PUNISHMENTS.~~
~~II.--OF CRIMINAL PROCEDURE.~~
~~III.--OF THE STATE PRISON AND COUNTY JAILS.~~
~~IV.--OF PREVENTION OF CRIMES AND APPREHENSION OF CRIMINALS.~~

Attachment 2

BILL ANALYSIS

SENATE COMMITTEE ON PUBLIC SAFETY
Senator Gloria Romero, Chair
2007-2008 Regular Session

SB 1019
1019

SB 1019 (Romero)
As Amended March 26, 2007
Hearing date: April 17, 2007
Penal Code
SM:mc

PEACE OFFICER RECORDS

HISTORY

Source: Author

Prior Legislation: None

Support: Antonio Villaraigosa, Mayor of Los Angeles; William J. Bratton, Los Angeles Chief of Police; California Newspaper Publishers Association; American Civil Liberties Union; Taxpayers for Improving Public Safety; Californians Aware; First Amendment Coalition; La Raza Centro Legal, Inc.; Mexican American Legal Defense and Educational Fund; Merrick J. Bobb, Attorney at Law (former Special Counsel, Los Angeles Police Commission); Lawyers' Committee for Civil Rights of the San Francisco Bay Area; Los Amigos of Orange County; Progressive Jewish Alliance; Coalition for Human Immigrant Rights of Los Angeles; Hunger Action Los Angeles; one individual

Opposition: Riverside Sheriffs Association; Association for Los Angeles Deputy Sheriffs, Inc.; Los Angeles Police Protective League; California Association of Highway Patrolmen; Peace Officers Research Association of California; California Peace Officers' Association;

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California Police Chiefs Association; California Narcotic Officers' Association

KEY ISSUE

SHOULD PUBLIC ACCESS TO HEARINGS AND RECORDS OF POLICE DISCIPLINARY PROCEEDINGS BE EXPANDED, AS SPECIFIED?

PURPOSE

The purpose of this bill is to (1) provide that public disclosure of investigations or proceedings concerning the conduct of peace officers or custodial officers will extend to those conducted by a civilian review board, personnel board, police commission, or civil service commission, expressly abrogating the decision of the California Supreme Court in Copley Press v. Superior Court , 39 Cal.4th 1272 (2006); (2) provide that any charter city may elect, as specified, to follow the practices it followed before the Copley Press decision with respect to the release of limited information regarding certain personnel investigations; (3) permit departments or agencies employing peace officers or custodial officers to release specified information with respect to disciplinary matters, as specified; (4) permit, in cases in which a governmental body outside the department or agency makes a find adverse to an officer, as specified, and the finding is overturned or the recommendation is not followed by the department or agency that employs the peace officer, the department or agency, in its discretion, to release any information already released by the outside body, as well as a summary of the grounds for overturning the outside body's finding or not following its recommendation; and (5) provide that information disclosable pursuant to this section shall be made available pursuant to the Public Records Act.

Existing law provides that any agency in California that employs peace officers shall establish a procedure to investigate complaints by members of the public against the personnel of

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these agencies, and shall make a written description of the procedure available to the public. (Penal Code 832.5(a)(1).)

Existing law provides that complaints and any reports or findings relating to these complaints shall be retained for a period of at least five years. All complaints retained pursuant to this subdivision may be maintained either in the officer's general personnel file or in a separate file designated by the agency, as specified. However, prior to any official determination regarding promotion, transfer, or disciplinary action by an officer's employing agency, the complaints determined to be frivolous shall be removed from the officer's general personnel file and placed in separate file designated by the department or agency, as specified. (Penal Code 832.5(b).)

Existing law provides that complaints by members of the public that are determined by the officer's employing agency to be frivolous, as defined, or unfounded or exonerated, or any portion of a complaint that is determined to be frivolous, unfounded, or exonerated, shall not be maintained in that officer's general personnel file. However, these complaints shall be retained in other, separate files that shall be deemed personnel records for purposes of the California Public Records Act and Section 1043 of the Evidence Code (which governs discovery and disclosure of police personnel records in legal proceedings). (Penal Code 832.5(c).)

Existing law provides that peace or custodial officer personnel records and records maintained by any state or local agency pursuant to Section 832.5, or information obtained from these records, are confidential and shall not be disclosed in any criminal or civil proceeding except by discovery pursuant to Sections 1043 and 1046 of the Evidence Code. This section shall not apply to investigations or proceedings concerning the conduct of peace officers or custodial officers, or an agency or department that employs those officers, conducted by a grand jury, a district attorney's office, or the Attorney General's office. (Penal Code 832.7(a), emphasis added.)

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This bill expands the exception to confidentiality of peace officer personnel records regarding investigations or proceedings involving peace officer conduct to include such investigations or proceedings when conducted by a civilian review board, personnel board, police commission, or civil service commission.

Existing law states that a department or agency shall release to the complaining party a copy of his or her own statements at the time the complaint is filed. (Penal Code 832.7(b).)

Existing law provides that a department or agency that employs peace or custodial officers may disseminate data regarding the number, type, or disposition of complaints (sustained, not sustained, exonerated, or unfounded) made against its officers if that information is in a form which does not identify the individuals involved. (Penal Code 832.7(c).)

Existing law provides that a department or agency that employs peace or custodial officers may release factual information concerning a disciplinary investigation if the officer who is the subject of the disciplinary investigation, or the officer's agent or representative, publicly makes a statement he or she knows to be false concerning the investigation or the imposition of disciplinary action. Information may not be disclosed by the peace or custodial officer's employer unless the false statement was published by an established medium of communication, such as television, radio, or a newspaper. Disclosure of factual information by the employing agency pursuant to this subdivision is limited to facts contained in the officer's personnel file concerning the disciplinary investigation or imposition of disciplinary action that specifically refute the false statements made public by the peace or custodial officer or his or her agent or representative. (Penal Code 832.7(d).)

Existing law provides that, as used in Section 832.7, "personnel records" means any file maintained under that individual's name by his or her employing agency and containing records relating to any of the following:

Personal data, including marital status, family members,

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educational and employment history, home addresses, or similar information.

Medical history.

Election of employee benefits.

Employee advancement, appraisal, or discipline.

Complaints, or investigations of complaints, concerning an event or transaction in which he or she participated, or which he or she perceived, and pertaining to the manner in which he or she performed his or her duties.

Any other information the disclosure of which would constitute an unwarranted invasion of personal privacy. (Penal Code 832.8.)

Existing law states that the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state. (Government Code 6250.)

Existing law provides that public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided. Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law. (Government Code 6253(a).)

Existing law provides that any public agency must justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record. (Government Code 6255(a).)

Existing law provides that records exempted or prohibited from disclosure pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege, are exempt from disclosure under the California Public Records Act. (Government Code 6250, et seq.)

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Existing case law provides that a public administrative body responsible for hearing a peace officer's appeal of a disciplinary matter is an "employing agency" relative to that officer, and therefore exempt from disclosing certain records of its proceedings in the matter under the California Public Records Act. (Copley Press, Inc. v. Superior Court, 39 Cal. 4th 1272 (2006).)

This bill expressly abrogates the decision of the California Supreme Court in Copley Press v. Superior Court, 39 Cal.4th 1272 (2006).

This bill provides that any charter city may elect, as specified, to follow the practices it followed before the Copley Press decision with respect to the release of limited information regarding certain personnel investigations.

This bill permits departments or agencies employing peace officers or custodial officers to release specified information with respect to disciplinary matters, as specified.

This bill permits, in cases in which a governmental body outside the department or agency makes a finding adverse to an officer, as specified, and the finding is overturned or the recommendation is not followed by the department or agency that employs the peace officer, the department or agency, in its discretion, to release any information already released by the outside body, as well as a summary of the grounds for overturning the outside body's finding or not following its recommendation.

This bill provides that information disclosable pursuant to this section shall be made available pursuant to the Public Records Act.

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION ("ROCA") IMPLICATIONS

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California currently faces an extraordinary and severe prison and jail overcrowding crisis. California's prison capacity is nearly exhausted as prisons today are being operated with a *significant level of overcrowding.*<1> *In addition, California's* jails likewise are significantly overcrowded. Twenty California counties are operating under jail population caps. According to the State Sheriffs' Association, "counties are currently releasing 18,000 pre and post-sentenced inmates every month and many counties are so overcrowded they do not accept misdemeanor bookings in any form, ..."<2> In January of this year the Legislative Analyst's office summarized the trajectory of California's inmate population over the last two decades:

> During the past 20 years, jail and prison *populations have increased significantly.* County jail populations have increased by about 66 percent over that period, an amount that has been limited by court-ordered population caps. The prison population has grown even more dramatically during that period, tripling since the mid-1980s.<3>

The level of overcrowding, and the impact of the population crisis on the day-to-day prison operations, is staggering:

> As of December 31, 2006, the California Department of Corrections and Rehabilitation (CDCR) was estimated to have 173,100 inmates in the state prison system, based on CDCR's fall 2006 *population projections. However, . . .* the department only operates or contracts for a total of 156,500 permanent bed capacity (not including out-of-state beds, . . .), resulting in a shortfall of about 16,600 prison beds relative to

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<1> Analysis of the 2007-08 Budget Bill: Judicial and Criminal Justice, Legislative Analyst's Office (February 21, 2007).
<2> Memorandum from CSSA President Gary Penrod to Governor, February 14, 2007.
<3> California's Criminal Justice System: A Primer. Legislative Analyst's Office (January 2007).

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> the inmate population. The most significant bed shortfalls are for Level I, II, and IV inmates, as well as at reception centers. As a result of the bed deficits, CDCR houses about 10 percent of the inmate population in temporary beds, such as in dayrooms and gyms. In addition, many inmates are housed in facilities designed for different security levels. For example, there are currently about 6,000 high security (Level IV) inmates housed in beds designed for Level III inmates.
>
> . . . (S)ignificant overcrowding has both operational and fiscal consequences. Overcrowding and the use of temporary beds create security concerns, particularly for medium- and high-security inmates. Gyms and dayrooms are not designed to provide security coverage as well as in permanent housing units, and overcrowding can contribute to inmate unrest, disturbances, and assaults. This can result in additional state costs for medical treatment, workers' compensation, and staff overtime. In addition, overcrowding can limit the ability of prisons to provide rehabilitative, health care, and other types of programs because prisons were not designed with sufficient space to provide these services to the increased population. The difficulty in providing inmate programs and services is exacerbated by the use of program space to house inmates. Also, to the extent that inmate unrest is caused by overcrowding, rehabilitation programs and other services can be disrupted by the resulting lockdowns.<4>

As a result of numerous lawsuits, the state has entered into several consent decrees agreeing to improve conditions in the state's prisons. As these cases have continued over the past several years, prison conditions nonetheless have failed to improve and, over the last year, the scrutiny of the federal

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<4> Analysis 2007-08 Budget Bill, supra, fn. 1.

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courts over California's prisons has intensified.

In February of 2006, the federal court appointed a receiver to take over the direct management and operation of the prison medical health care delivery system from the state. Motions filed in December of 2006 are now pending before three federal court judges in which plaintiffs are seeking a court-ordered limit on the prison population pursuant to the federal Prison Litigation Reform Act. Medical, mental health and dental care programs at CDCR each are "currently under varying levels of federal court supervision based on court rulings that the state has failed to provide inmates with adequate care as required under the Eighth Amendment to the U.S. Constitution. The courts found key deficiencies in the state's correctional programs, including: (1) an inadequate number of staff to deliver health care services, (2) an inadequate amount of clinical space within prisons, (3) failures to follow nationally recognized health care guidelines for treating inmate-patients, and (4) poor coordination between health care staff and custody staff."<5>

This bill does not appear to aggravate the prison and jail overcrowding crisis outlined above.

COMMENTS

1. Stated Need for This Bill

According to the author:

> Public access to information about police misconduct and a department's response is critical to ensuring public trust. Open and independent oversight not only benefits the public, but only a transparent complaint process can convincingly clear a police officer of misconduct charges in the eyes of the public.
>
> The current law hamstrings police executives from communicating with the public about significant cases of public concerns, undermining the credibility of law

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<5> Primer, supra, fn. 4.

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enforcement agencies in the community. SB 1019 will allow police departments to have open communication with the public by overturning the California Supreme Court's Copley Press decision.

2. Background - Police Discipline and Civilian Oversight

The Rodney King beating, in April 1991 resulted in creation of the Independent Commission on the Los Angeles Police Department (the "Christopher Commission") by Mayor Tom Bradley. The Christopher Commission found that, "there is a significant number of LAPD officers who repetitively misuse force and persistently ignore the written policies and guidelines of the Department regarding force." (Christopher Commission, summary of report, pg. 9.) Furthermore, it found that "No area of police operations received more adverse comment during the Commission's public hearings than the Department's handling of complaints against LAPD officers, particularly allegations involving the use of excessive force. Statistics make the public's frustration understandable. Of the 2,152 citizen allegations of excessive force from 1986 through 1990, only 42 were sustained." (Id. at pg. 19.) The Commission found the "complaint system skewed against complainants," (ibid) "the process of complaint adjudication is flawed[,]" (id. at pg. 20) "when excessive force complaints are sustained, the punishment is more lenient that it should be" (ibid) and, "A major overhaul of the disciplinary system is necessary to correct these problems." (Ibid.)

Less than ten years later, the LAPD found itself embroiled in another controversy involving police misconduct. In the late 1990's a scandal erupted in Los Angeles regarding widespread abuses of authority by a special gang-suppression unit created within the Los Angeles Police Department known as the "Community Resources Against Street Hoodlums" or CRASH unit, which operated in the Rampart area of Los Angeles, just west of downtown LA. Revelations of police misconduct by the CRASH unit, and the resulting public outcry, led to the creation of an Independent Review panel of over 120 community leaders, attorneys, investigators, accountants, educators, retired judges, retired law enforcement officers, business executives and others to

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present the Police Commission with a report on the policies, procedures and operations. Regarding the scope of the misconduct, that panel reported:

> Rampart CRASH officers developed an independent *subculture that embodied a "war on gangs" mentality* where the ends justified the means. They resisted supervision and control and ignored LAPD's procedures and policies. The misconduct of the CRASH officers went undetected because Department's managers ignored warning signs and failed to provide the leadership, oversight, management, and supervision necessary to control this specialized unit. The ultimate result is a police corruption scandal of historic proportions, involving allegations of not just widespread perjury and corruption, but of routine evidence-planting, and incidents of attempted murder and the beatings of suspects." (Report of the Rampart Independent Review Panel, Executive Summary, pg. 1.)

Significantly, the panel reported that, despite the recommendations of the Christopher Commission, "[n]evertheless, *civilian oversight remains weak.*" (*Id. at pg. 5.*) And that, "[t]he lack of visible and effective civilian oversight worsens the Department's low credibility problem in the eyes of the community." (Ibid.)

3. Copley Press, Inc. v. Superior Court

In August of 2006, the California Supreme Court ruled in Copley Press, Inc. v. Superior Court, that the right of access to public records under the California Public Records Act did not allow Copley Press, which publishes the San Diego Union-Tribune newspaper, to be given access to the hearing or records of an administrative appeal of a disciplinary action taken against a San Diego deputy sheriff. (Copley Press, Inc. v. Superior Court, 39 Cal. 4th 1272 (2006).) First, the Court found that the Legislature specifically intended to exempt certain records relating to peace officers from disclosure under the Public Records Act.

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> In relevant part, [statute] provides that certain "[p]eace officer or custodial officer" records and "information obtained from these records ... are confidential and shall not be disclosed in any criminal or civil proceeding except by discovery pursuant to Sections 1043 and 1046 of the Evidence Code." The statute applies to two categories of records. The first is "personnel records", define[d] as "any file maintained under [an officer's] name by his or her employing agency and containing records relating to," among other things, "[p]ersonal data," "[e]mployee advancement, appraisal, or discipline," and "[c]omplaints, or investigations of complaints, concerning an event or transaction in which he or she participated ... and pertaining to the manner in which he or she performed his or her duties." The second category of records ? is "records maintained by any state or local agency ..." The latter statute requires "[e]ach department or agency in [California] that employs peace officers [to] establish a procedure to investigate complaints by members of the public against the personnel of these departments or agencies ... ." It also requires that "[c]omplaints and any reports or findings relating to these complaints ... be retained for a period of at least five years ... either in the peace or custodial officer's general personnel file or in a separate file designated by the department or agency as provided by department or agency policy." The " '[g]eneral personnel file' " is "the file maintained by the agency containing the primary records specific to each peace or custodial officer's employment, including evaluations, assignments, status changes, and imposed discipline."

(Copley Press, Inc. v. Superior Court, supra, at 1284, citations omitted.)

Having found that the Legislature expressly exempted records of police disciplinary proceedings from Public Records Act

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disclosure requirements, the Court went on to find that this exemption applies regardless of whether the law enforcement agency involved provides the officer with the right to appeal disciplinary matters to a body within the agency or to an independent body.

> [I]t is unlikely the Legislature, which went to great effort to ensure that records of such matters would be confidential and subject to disclosure under very limited circumstances, intended that such protection would be lost as an inadvertent or incidental consequence of a local agency's decision, for reasons unrelated to public disclosure, to designate someone outside the agency to hear such matters. Nor is it likely the Legislature intended to make loss of confidentiality a factor that influences this decision.

(Copley Press, Inc. v. Superior Court, supra, at 1295.)

The Court repeated continuously throughout the opinion that weighing the matter of whether and when such records should be subject to disclosure is a policy matter for the Legislature, not the Courts, to decide:

> Copley's appeal to policy considerations is unpersuasive. Copley insists that "public scrutiny of disciplined officers is vital to prevent the arbitrary exercise of official power by those who oversee law enforcement and to foster public confidence in the system, especially given the widespread concern about America's serious police misconduct problems. There are, of course, competing policy considerations that may favor confidentiality, such as protecting complainants and witnesses against recrimination or retaliation, protecting peace officers from publication of frivolous or unwarranted charges, and maintaining confidence in law enforcement agencies by avoiding premature disclosure of groundless claims of police misconduct. "? the Legislature, though

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> presented with arguments similar to Copley's, made the policy decision "that the desirability of confidentiality in police personnel matters does outweigh the public interest in openness." ... [I]t is for the Legislature to weigh the competing policy considerations. As one Court of Appeal has explained in rejecting a similar policy argument: "[O]ur decision ... cannot be based on such generalized public policy notions. As a judicial body, ... our role [is] to interpret the laws as they are written."

(Copley Press, Inc. v. Superior Court, supra, 1298-1299, *citations omitted, emphasis added.*)

4. How This Bill Would Respond to Copley

Current statute states that:

> Peace officer or custodial officer personnel records and records maintained by any state or local agency pursuant to Section 832.5, or information obtained from these records, are confidential and shall not be disclosed in any criminal or civil proceeding except by discovery pursuant to Sections 1043 and 1046 of the Evidence Code. This section shall not apply to investigations or proceedings concerning the conduct of peace officers or custodial officers, or an agency or department that employs those officers, conducted by a grand jury, a district attorney's office, or the Attorney General's office. (Penal Code 832.7(a).)

SB 1019 amends Penal Code section 832.7 to add that this section shall also not apply to civilian review boards, personnel boards, police commissions, or civil service commissions.

SB 1019 also expressly states, that it is the intent of the Legislature in amending this section to abrogate the Supreme Court's ruling in the Copley Press case and to restore public access to peace officer records, and to restore public access to meetings and hearings that were open to the public prior to the

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Copley Press decision.

Next, SB 1019 would authorize counties to restore the disclosure practices they followed prior to Copley Press. The bill provides:

> Notwithstanding any provision of this chapter or the holding in Copley Press, Inc. v. Superior Court (2006) 39 Cal.4th 1272 interpreting any provision of this chapter, any charter city may elect, through an ordinance duly enacted, to follow the practices it followed before the Copley Press decision with respect to the release of limited information regarding certain personnel investigations. If a charter city so elects, the city's legislative body must find, based on the presentation of substantial evidence, that the practices to be enacted and followed were followed by the city before the Copley Press decision was final. (Pg. 3, lines 25-34.)

SHOULD COUNTIES BE AUTHORIZED TO RESTORE THE DISCLOSURE PRACTICES THEY FOLLOWED PRIOR TO THE COPLEY PRESS DECISION REGARDING HEARINGS AND RECORDS OF POLICE DISCIPLINARY MATTERS?

SB 1019 also provides that, in cases where a disciplinary charge is sustained and serious sanctions imposed, i.e., suspension, demotion, removal or other separation of the peace officer from service with the department (other than by resignation), the *department may release the following information:*

The name and badge number of the subject officer.
The charges brought against the officer.
The discipline sought by the office.
The name and current address of the complainant, unless the complainant requests it be kept confidential.
The factual findings with respect to the conduct at issue.
The discipline imposed or corrective action taken.

SB 1019 also provides that in cases where a governmental body outside the law enforcement agency sustains an allegation of

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misconduct and/or recommends discipline against an officer, as specified, and the agency overturns those findings and/or does not follow the recommendations of the outside body, that the agency may, in its discretion , "release any information already released by the outside body, as well as a summary of the grounds for overturning the outside body's finding or not following its recommendation." (Pg. 4, lines 10-19.)

This would allow the agency to inform the public of its reasons for failing to take disciplinary action in a particular case.

Lastly, SB 1019 states that information disclosable pursuant to this section shall be made available upon request pursuant to the Public Records Act.

5. Arguments in Support

Los Angeles Mayor Antonio Villaraigosa and Police Chief William J. Bratton state:

> Here in Los Angeles, the Los Angeles Police Department (LAPD) had a long history of Board of Rights hearings that were open to the public prior to the Copley decision. We believe that open Board of Rights hearings add transparency to the process by which complaints against police officers are adjudicated. This transparency serves both the public's interest in understanding the intricacies of a particular event and the police officer's interest in publicly absolving themselves in cases where they were acting in accordance with LAPD procedures.
>
> [This bill] would allow Los Angeles to go back to the practice of open Board of Rights hearings, as was the practice prior to the Copley decision.

The American Civil Liberties Union states:

> While the police associations have framed the provisions in Section 832.7 and 832.8 as important to

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protect officer privacy, it is really about their *efforts to preserve unique secrecy provisions* that exist only for law enforcement and not for any other public employees. To be clear, there is no privacy interest in sustained misconduct by a public employee. Police officers work in public, they interact with the public, they are paid with public funds, and, occasionally, they receive complaints from the public. When complaints are filed and found to be true, the public should have a right to know as there is for all other public employees. (Emphasis in original.)

* * * * * * * *

The importance of transparency and problem with secrecy is best illustrated by the controversy over the shooting of 13 year old Devin Brown by an officer with the Los Angeles Police Department. There, the Police Commission found the shooting out of policy, but the Board of Rights for the Police Department - previously open to the public but now closed due to *Copley Press - found the police action within policy.* The secrecy around the proceeding resulted in community protest. Police Chief William Bratton wanted to have a public process and release information, but was prohibited from doing so as a result of Copley Press. Chief Bratton has subsequently called for Copley Press to be overturned, stating, "I am in support of change ... I am very frustrated by [the current process]. The public has no access to it. The media has no access to it. That's crazy, absolutely crazy. We have nothing to hide in the Los Angeles Police Department."<6>

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<6> Jim Newton, "Secrecy a Major Issue for the LAPD," Los Angeles Times, January 15, 2007.

6. Argument in Opposition

The Riverside Sheriffs Association states:

> In 1978, the California Legislature enacted Penal Code Sections 832.7 and 832.8 and Evidence Code Section 1043 through 1046 in response to the Court's 1974 decision in Pitchess v. Superior Court. The Legislature designed these so-called "Pitchess Statutes" to limit "fishing expeditions" into peace officers' personnel files by criminal defendants and their defense attorney by providing that peace officer personnel records "maintained" under the officer's name "by his or her employing agency" are all confidential cases and may be disclosed only after a judge finds good cause for the disclosure and that the requested records are material to the case before the court. (Emphasis in original.)
>
> * * * * * *
>
> Excluding civil service commissions, civilian review boards, and other panels that hear police discipline cases from the definition of "employing agency" would "frustrate" the Legislature's decision to allow municipalities to decide for themselves whether to conduct disciplinary appeals within the law enforcement department or to delegate that responsibility to a municipality-wide review body. It is prejudicially unfair to make the extent of confidentiality available to a peace officer turn on whether he or she works in a jurisdiction where responsibility for administrative appeals has been assigned to someone outside the law enforcement department. (Emphasis in original.)
>
> * * * * *
>
> The mandated disclosure of officer's personnel records called for in this bill will subject officers to

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increased risk of retribution on the streets, lost credibility, diminished effectiveness on the beat, diminished credibility on the witness stand, increased civil liability, and general embarrassment. *Maintaining the confidentiality of these records best* serves the important policy goal of maintaining confidence in law enforcement by avoiding premature disclosure of groundless claims of police misconduct. (Emphasis in original.)

7. Similar Legislation

AB 1648 (Leno), pending in Assembly Public Safety Committee, also abrogates the Copley decision.

****

Approved as to Form and Legality

DRAFT

City Attorney

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

Introduced by Councilmember _____

RESOLUTION OF THE OAKLAND CITY COUNCIL IN SUPPORT OF ASSEMBLY BILL 1648 (LENO) AND SENATE BILL 1019 (ROMERO): PEACE OFFICE RECORDS, TO PERMIT CIVILIAN POLICE REVIEW BOARDS AND OTHER OVERSIGHT AGENCIES TO HOLD PUBLIC HEARINGS REGARDING COMPLAINTS ABOUT POLICE CONDUCT AND TO PROVIDE PUBLIC ACCESS TO CERTAIN PEACE OFFICER PERSONNEL RECORDS

WHEREAS, last year the California Supreme Court issued its decision in *Copley Press, Inc.* v. *Superior Court* (2006) 39 Cal.4th 1272, holding that records of administrative appeals to agencies outside the employing agency should not be open to the public under Penal Code section 832.7; and

WHEREAS, the City of Oakland established the Citizen's Police Review Board (CPRB) on April 15, 1980 in order to provide the public with open hearings on police officer conduct complaints; and

WHEREAS, the conduct of these public hearings enhanced community / police relations by increasing the transparency of government to permit public access to the complaint process; and

WHEREAS, the City Council has been consistent in its support of conducting open hearings for police conduct complaints; and

WHEREAS, passage of AB 1648 (Leno) and / or SB 1019 (Romero) would permit the CPRB to resume holding open hearings and would also provide public access to certain peace officer personnel records; now, therefore be it

RESOLVED: That the City Council of the City of Oakland hereby declares its support for AB 1648 by Assembly member Leno and SB 1019 by Senator Romero; and be it

FURTHER RESOLVED: That the City Council directs the City Administrator and the City's legislative lobbyist to advocate for the above positions in the State Legislature.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 20_____

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, and PRESIDENT DE LA FUENTE

NOES -

ABSENT -

ABSTENTION -

ATTEST: DRAFT

LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California