

AMENDMENTS TO SENATE BILL NO. 776
AS AMENDED IN SENATE JANUARY 6, 2020

Amendment 1

In the title, strike out lines 2 and 3 and insert:

An act to amend Section 1045 of the Evidence Code, and to amend Sections 832.5, 832.7, and 832.12 of, and to add Section 832.13 to, the Penal Code, relating to peace officers.

Amendment 2

On page 2, before line 1, insert:

SECTION 1. Section 1045 of the Evidence Code is amended to read:

1045. (a) ~~Nothing in this article shall be construed to~~ This article does not affect the right of access to records of complaints, or investigations of complaints, or discipline imposed as a result of those investigations, concerning an event or transaction in which the peace officer or custodial officer, as defined in Section 831.5 of the Penal Code, participated, or which ~~he or she~~ the officer perceived, and pertaining to the manner in which ~~he or she~~ the officer performed ~~his or her~~ the officer's duties, provided that information is relevant to the subject matter involved in the pending litigation.

(b) In determining relevance, the court shall examine the information in chambers in conformity with Section 915, and shall exclude from ~~disclosure:~~ disclosure both of the following:

~~(1) Information consisting of complaints concerning conduct occurring more than five years before the event or transaction that is the subject of the litigation in aid of which discovery or disclosure is sought.~~

~~(2)~~

(1) In any criminal proceeding the conclusions of any officer investigating a complaint filed pursuant to Section 832.5 of the Penal Code.

~~(3)~~

(2) Facts sought to be disclosed that are so remote as to make disclosure of little or no practical benefit.

(c) In determining relevance where the issue in litigation concerns the policies or pattern of conduct of the employing agency, the court shall consider whether the information sought may be obtained from other records maintained by the employing agency in the regular course of agency business which would not necessitate the disclosure of individual personnel records.

(d) Upon motion seasonably made by the governmental agency which has custody or control of the records to be examined or by the officer whose records are sought, and upon good cause showing the necessity thereof, the court may make any order which justice requires to protect the officer or agency from unnecessary annoyance, embarrassment or oppression.

(e) The court shall, in any case or proceeding permitting the disclosure or discovery of any peace or custodial officer records requested pursuant to Section 1043,



order that the records disclosed or discovered may not be used for any purpose other than a court proceeding pursuant to applicable law.

SEC. 2. Section 832.5 of the Penal Code is amended to read:

832.5. (a) (1) Each department or agency in this state that employs peace officers shall establish a procedure to investigate complaints by members of the public against the personnel of these departments or agencies, and shall make a written description of the procedure available to the public.

(2) Each department or agency that employs custodial officers, as defined in Section 831.5, may establish a procedure to investigate complaints by members of the public against those custodial officers employed by these departments or agencies, provided however, that any procedure so established shall comply with the provisions of this section and with the provisions of Section 832.7.

(b) Complaints and any reports or findings relating to these complaints shall be ~~retained for a period of at least five years.~~ retained, including all complaints and any reports currently in the possession of the department or agency. All complaints retained pursuant to this subdivision may be maintained 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, in accordance with all applicable requirements of law. However, prior to any official determination regarding promotion, transfer, or disciplinary action by an officer's employing department or agency, the complaints described by subdivision (c) shall be removed from the officer's general personnel file and placed in separate file designated by the department or agency, in accordance with all applicable requirements of law.

(c) Complaints by members of the public that are determined by the peace or custodial officer's employing agency to be frivolous, as defined in Section 128.5 of the Code of Civil Procedure, 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 (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and Section 1043 of the Evidence Code.

(1) Management of the peace or custodial officer's employing agency shall have access to the files described in this subdivision.

(2) Management of the peace or custodial officer's employing agency shall not use the complaints contained in these separate files for punitive or promotional purposes except as permitted by subdivision (f) of Section 3304 of the Government Code.

(3) Management of the peace or custodial officer's employing agency may identify any officer who is subject to the complaints maintained in these files which require counseling or additional training. However, if a complaint is removed from the officer's personnel file, any reference in the personnel file to the complaint or to a separate file shall be deleted.

(d) As used in this section, the following definitions apply:

(1) "General personnel file" means 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.

(2) "Unfounded" means that the investigation clearly established that the allegation is not true.

(3) “Exonerated” means that the investigation clearly established that the actions of the peace or custodial officer that formed the basis for the complaint are not violations of law or department policy.

SEC. 3. Section 832.7 of the Penal Code is amended to read:

832.7. (a) Except as provided in subdivision (b), the personnel records of peace officers and custodial officers and records maintained by ~~any~~ a 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~~ does 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.

(b) (1) Notwithstanding subdivision (a), subdivision (f) of Section 6254 of the Government Code, or any other law, the following peace officer or custodial officer personnel records and records maintained by ~~any~~ a state or local agency shall not be confidential and shall be made available for public inspection pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code):

(A) A record relating to the report, investigation, or findings of any of the following:

(i) An incident involving the discharge of a firearm at a person by a peace officer or custodial officer.

(ii) An incident ~~in which~~ involving the use of force by a peace officer or custodial officer against a person ~~resulted in death, or in great bodily injury.~~ person, provided that the underlying complaint was not determined to be frivolous.

(B) (i) Any record relating to an incident in which ~~a sustained finding was made by any law enforcement agency or oversight agency that~~ a peace officer or custodial officer engaged in sexual assault involving a member of the ~~public.~~ public, provided that the underlying complaint was not determined to be frivolous.

(ii) As used in this subparagraph, “sexual assault” means the commission or attempted initiation of a sexual act with a member of the public by means of force, threat, coercion, extortion, offer of leniency or other official favor, or under the color of authority. For purposes of this definition, the propositioning for or commission of any sexual act while on duty is considered a sexual assault.

(iii) As used in this subparagraph, “member of the public” means any person not employed by the officer’s employing agency and includes any participant in a cadet, explorer, or other youth program affiliated with the agency.

(C) Any record relating to an incident ~~in which a sustained finding was made by any law enforcement agency or oversight agency of~~ involving dishonesty by a peace officer or custodial officer directly relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by, another peace officer or custodial officer, including, but not limited to, any sustained finding of perjury, false statements, filing false reports, destruction, falsifying, or concealing of ~~evidence.~~ evidence, provided that the underlying complaint was not determined to be frivolous.

(D) Any record relating to an incident, including, but not limited to, verbal statements, writings, online posts, recordings, and gestures, involving prejudice or

discrimination against a person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, provided the underlying complaint was not determined to be frivolous.

(E) Any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency that the peace officer made a wrongful arrest or conducted a wrongful search.

(2) Records that shall be released pursuant to this subdivision include all investigative reports; photographic, audio, and video evidence; transcripts or recordings of interviews; autopsy reports; all materials compiled and presented for review to the district attorney or to any person or body charged with determining whether to file criminal charges against an officer in connection with an incident, or whether the officer's action was consistent with law and agency policy for purposes of discipline or administrative action, or what discipline to impose or corrective action to take; documents setting forth findings or recommended findings; and copies of disciplinary records relating to the incident, including any letters of intent to impose discipline, any documents reflecting modifications of discipline due to the Skelly or grievance process, and letters indicating final imposition of discipline or other documentation reflecting implementation of corrective action. Records that shall be released pursuant to this subdivision also include records relating to an incident specified in paragraph (1) in which the peace officer or custodial officer resigned before the law enforcement agency or oversight agency concluded its investigation into the alleged incident.

(3) A record from a separate and prior investigation or assessment of a separate incident shall not be released unless it is independently subject to disclosure pursuant to this subdivision.

(4) If an investigation or incident involves multiple officers, information about allegations of misconduct by, or the analysis or disposition of an investigation of, an officer shall not be released pursuant to subparagraph (B) or (C) of paragraph (1), unless it relates to a sustained finding against that officer. However, factual information about that action of an officer during an incident, or the statements of an officer about an incident, shall be released if they are relevant to a sustained finding against another officer that is subject to release pursuant to subparagraph (B) or (C) of paragraph (1).

(5) An agency shall redact a record disclosed pursuant to this section only for any of the following purposes:

(A) To remove personal data or information, such as a home address, telephone number, or identities of family members, other than the names and work-related information of peace and custodial officers.

(B) To preserve the anonymity of complainants and witnesses.

(C) To protect confidential medical, financial, or other information of which disclosure is specifically prohibited by federal law or would cause an unwarranted invasion of personal privacy that clearly outweighs the strong public interest in records about misconduct and serious use of force by peace officers and custodial officers.

(D) Where there is a specific, articulable, and particularized reason to believe that disclosure of the record would pose a significant danger to the physical safety of the peace officer, custodial officer, or another person.

(6) Notwithstanding paragraph (5), an agency may redact a record disclosed pursuant to this section, including personal identifying information, where, on the facts of the particular case, the public interest served by not disclosing the information clearly outweighs the public interest served by disclosure of the information.

(7) An agency may withhold a record of an incident described in subparagraph (A) of paragraph (1) that is the subject of an active criminal or administrative investigation, in accordance with any of the following:

(A) (i) During an active criminal investigation, disclosure may be delayed for up to 60 days from the date the use of force occurred or until the district attorney determines whether to file criminal charges related to the use of force, whichever occurs sooner. If an agency delays disclosure pursuant to this clause, the agency shall provide, in writing, the specific basis for the agency's determination that the interest in delaying disclosure clearly outweighs the public interest in disclosure. This writing shall include the estimated date for disclosure of the withheld information.

(ii) After 60 days from the use of force, the agency may continue to delay the disclosure of records or information if the disclosure could reasonably be expected to interfere with a criminal enforcement proceeding against an officer who used the force. If an agency delays disclosure pursuant to this clause, the agency shall, at 180-day intervals as necessary, provide, in writing, the specific basis for the agency's determination that disclosure could reasonably be expected to interfere with a criminal enforcement proceeding. The writing shall include the estimated date for the disclosure of the withheld information. Information withheld by the agency shall be disclosed when the specific basis for withholding is resolved, when the investigation or proceeding is no longer active, or by no later than 18 months after the date of the incident, whichever occurs sooner.

(iii) After 60 days from the use of force, the agency may continue to delay the disclosure of records or information if the disclosure could reasonably be expected to interfere with a criminal enforcement proceeding against someone other than the officer who used the force. If an agency delays disclosure under this clause, the agency shall, at 180-day intervals, provide, in writing, the specific basis why disclosure could reasonably be expected to interfere with a criminal enforcement proceeding, and shall provide an estimated date for the disclosure of the withheld information. Information withheld by the agency shall be disclosed when the specific basis for withholding is resolved, when the investigation or proceeding is no longer active, or by no later than 18 months after the date of the incident, whichever occurs sooner, unless extraordinary circumstances warrant continued delay due to the ongoing criminal investigation or proceeding. In that case, the agency must show by clear and convincing evidence that the interest in preventing prejudice to the active and ongoing criminal investigation or proceeding outweighs the public interest in prompt disclosure of records about use of serious force by peace officers and custodial officers. The agency shall release all information subject to disclosure that does not cause substantial prejudice, including any documents that have otherwise become available.

(iv) In an action to compel disclosure brought pursuant to Section 6258 of the Government Code, an agency may justify delay by filing an application to seal the basis for withholding, in accordance with Rule 2.550 of the California Rules of Court, or any successor ~~rule thereto~~, rule, if disclosure of the written basis itself would impact a privilege or compromise a pending investigation.

(B) If criminal charges are filed related to the incident in which force was used, the agency may delay the disclosure of records or information until a verdict on those charges is returned at trial or, if a plea of guilty or no contest is entered, the time to withdraw the plea pursuant to Section 1018.

(C) During an administrative investigation into an incident described in subparagraph (A) of paragraph (1), the agency may delay the disclosure of records or information until the investigating agency determines whether the use of force violated a law or agency policy, but no longer than 180 days after the date of the employing agency's discovery of the use of force, or allegation of use of force, by a person authorized to initiate an investigation, or 30 days after the close of any criminal investigation related to the peace officer or custodial officer's use of force, whichever is later.

(8) A record of a civilian complaint, or the investigations, findings, or dispositions of that complaint, shall not be released pursuant to this section if the complaint is frivolous, as defined in Section 128.5 of the Code of Civil Procedure, or if the complaint is unfounded.

(9) The cost of copies of records subject to disclosure pursuant to this subdivision that are made available upon the payment of fees covering direct costs of duplication pursuant to subdivision (b) of Section 6253 of the Government Code shall not include the costs of editing or redacting the records.

(10) For every day beyond 30 days after the date which a record is to be disclosed, as required by this subdivision, an agency shall be subject to a civil fine of one thousand dollars (\$1,000) per day for each day that the records are not disclosed.

(11) A member of the public who files a suit pursuant to Section 6258 of the Government Code for records required by this subdivision that are found to have been improperly withheld or improperly redacted shall be entitled to damages equal to twice the party's reasonable costs and attorney's fees.

(12) For purposes of releasing records pursuant to this subdivision, the attorney-client privilege shall not be asserted to limit the disclosure of factual information provided by the public entity to its attorney, factual information discovered by any investigation done by the public entity's attorney, or billing records related to the work done by the attorney.

(c) Notwithstanding subdivisions (a) and (b), a department or agency shall release to the complaining party a copy of ~~his or her~~ the complaining party's own statements at the time the complaint is filed.

(d) Notwithstanding subdivisions (a) and (b), 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.

(e) Notwithstanding subdivisions (a) and (b), 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 they~~ know 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~~ their agent or representative.

(f) (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 is 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.

(g) This section does not 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.

(h) This section does not supersede or affect the criminal discovery process outlined in Chapter 10 (commencing with Section 1054) of Title 6 of Part 2, or the admissibility of personnel records pursuant to subdivision (a), which codifies the court decision in *Pitchess v. Superior Court* (1974) 11 Cal.3d 531.

(i) Nothing in this chapter is intended to limit the public's right of access as provided for in *Long Beach Police Officers Association v. City of Long Beach* (2014) 59 Cal.4th 59.

SEC. 4. Section 832.12 of the Penal Code is amended to read:

832.12. (a) Each department or agency in this state that employs peace officers shall make a record of any investigations of misconduct involving a peace officer in ~~his or her~~ the officer's general personnel file or a separate file designated by the department or agency. A peace officer seeking employment with a department or agency in this state that employs peace officers shall give written permission for the hiring department or agency to view ~~his or her~~ the officer's general personnel file and any separate file designated by a department or agency.

(b) Prior to employing any peace officer, each department or agency in this state that employs peace officers shall request, and the hiring department or agency shall review, any records made available pursuant to subdivision (a).

SEC. 5. Section 832.13 is added to the Penal Code, to read:

832.13. Every person employed as a peace officer shall immediately report all uses of force by the officer to the officer's department or agency.

SEC. 6. 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.

Amendment 3
On page 2, strike out lines 1 to 14, inclusive

PROPOSED AMENDMENTS TO SENATE BILL NO. 776

AMENDED IN SENATE JANUARY 6, 2020

SENATE BILL

No. 776

Introduced by Senator Skinner

February 22, 2019



RN2013664

Amendment 1

~~An act to add Section 66024.5 to the Education Code, relating to postsecondary education.~~ *An act to amend Section 1045 of the Evidence Code, and to amend Sections 832.5, 832.7, and 832.12 of, and to add Section 832.13 to, the Penal Code, relating to peace officers.*

LEGISLATIVE COUNSEL'S DIGEST

SB 776, as amended, Skinner. ~~College admissions: criminal history inquiry: prohibition.~~ *Peace officers: release of records.*

(1) Existing law makes peace officer and custodial officer personnel records and specified records maintained by any state or local agency, or information obtained from these records, confidential and prohibits these records from being disclosed in any criminal or civil proceeding except by discovery. Existing law sets forth exceptions to this policy, including, among others, records relating to specified incidents involving the discharge of a firearm, sexual assault, perjury, or misconduct by a peace officer or custodial officer. Existing law makes a record related to an incident involving the use of force against a person resulting in death or great bodily injury subject to disclosure. Existing law requires a state or local agency to make these excepted records available for inspection pursuant to the California Public Records Act.

This bill would make every incident involving use of force subject to disclosure. The bill would remove the requirement that a complaint relating to sexual assault or dishonesty be found to be sustained following an investigation in order to be subject to disclosure. The bill

would require records relating to sustained findings of wrongful arrests and wrongful searches to be subject to disclosure. The bill would also require the disclosure of records relating to an incident involving prejudice or discrimination on the basis of specified protected classes. The bill would require the retention of all complaints currently in the possession of a department or agency. The bill would require that records relating to an incident in which an officer resigned before an investigation is completed to also be subject to release. For purposes of releasing records, the bill would prohibit assertion of the attorney-client privilege to limit the disclosure of factual information provided by the public entity to its attorney, factual information discovered by any investigation done by the public entity’s attorney, or billing records related to the work done by the attorney. The bill would impose a \$1,000 civil fine per day for each day beyond 30 days that records subject to disclosure are not disclosed. The bill would entitle a member of the public who successfully files suit for the release of records to twice the party’s reasonable costs and attorney’s fees. By imposing additional duties on local law enforcement agencies, this bill would impose a state-mandated local program.

(2) Existing law requires a court, in determining the relevance of evidence, to exclude from trial any information consisting of complaints concerning peace officer conduct that is more than 5 years older than the subject of the litigation.

This bill would delete that provision.

(3) Existing law requires an agency or department employing peace officers to make a record of any investigations of misconduct. Existing law requires a peace officer seeking employment with a department or agency to give written permission to the hiring agency or department to view that file.

This bill would require each department or agency to request and review that file prior to hiring a peace officer. The bill would also require every person employed as a peace officer to immediately report all uses of force by the officer to the officer’s department or agency. By imposing additional duties on local law enforcement, this bill would impose a state-mandated local program.

(4) 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 the statutory provisions noted above.

~~Existing law establishes the California Community Colleges, the California State University, the University of California, independent institutions of higher education, and private postsecondary educational institutions as the segments of postsecondary education in this state.~~

~~This bill would prohibit a postsecondary educational institution in this state from inquiring about a prospective student’s criminal history on an initial application form or at any time during the admissions process before the institution’s final decision relative to the prospective student’s application for admission. By imposing new duties on community college districts, 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 the statutory provisions noted above.~~

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

The people of the State of California do enact as follows:

- + SECTION 1. Section 1045 of the Evidence Code is amended
- + to read:
- + 1045. (a) ~~Nothing in this article shall be construed to~~*This*
- + *article does not* affect the right of access to records of complaints,
- + or investigations of complaints, or discipline imposed as a result
- + of those investigations, concerning an event or transaction in which
- + the peace officer or custodial officer, as defined in Section 831.5
- + of the Penal Code, participated, or which ~~he or she~~ *the officer*
- + perceived, and pertaining to the manner in which ~~he or she~~ *the*
- + *officer* performed ~~his or her~~ *the officer’s* duties, provided that
- + information is relevant to the subject matter involved in the pending
- + litigation.

Amendment 2

+ (b) In determining relevance, the court shall examine the
+ information in chambers in conformity with Section 915, and shall
+ exclude from ~~disclosure~~: *disclosure both of the following:*

+ ~~(1) Information consisting of complaints concerning conduct~~
+ ~~occurring more than five years before the event or transaction that~~
+ ~~is the subject of the litigation in aid of which discovery or~~
+ ~~disclosure is sought.~~

+ (2)
+ (1) In any criminal proceeding the conclusions of any officer
+ investigating a complaint filed pursuant to Section 832.5 of the
+ Penal Code.

+ ~~(3)~~
+ (2) Facts sought to be disclosed that are so remote as to make
+ disclosure of little or no practical benefit.

+ (c) In determining relevance where the issue in litigation
+ concerns the policies or pattern of conduct of the employing
+ agency, the court shall consider whether the information sought
+ may be obtained from other records maintained by the employing
+ agency in the regular course of agency business which would not
+ necessitate the disclosure of individual personnel records.

+ (d) Upon motion seasonably made by the governmental agency
+ which has custody or control of the records to be examined or by
+ the officer whose records are sought, and upon good cause showing
+ the necessity thereof, the court may make any order which justice
+ requires to protect the officer or agency from unnecessary
+ annoyance, embarrassment or oppression.

+ (e) The court shall, in any case or proceeding permitting the
+ disclosure or discovery of any peace or custodial officer records
+ requested pursuant to Section 1043, order that the records disclosed
+ or discovered may not be used for any purpose other than a court
+ proceeding pursuant to applicable law.

+ *SEC. 2. Section 832.5 of the Penal Code is amended to read:*

+ 832.5. (a) (1) Each department or agency in this state that
+ employs peace officers shall establish a procedure to investigate
+ complaints by members of the public against the personnel of these
+ departments or agencies, and shall make a written description of
+ the procedure available to the public.

+ (2) Each department or agency that employs custodial officers,
+ as defined in Section 831.5, may establish a procedure to
+ investigate complaints by members of the public against those

+ custodial officers employed by these departments or agencies,
+ provided however, that any procedure so established shall comply
+ with the provisions of this section and with the provisions of
+ Section 832.7.

+ (b) Complaints and any reports or findings relating to these
+ complaints shall be ~~retained for a period of at least five years.~~
+ *retained, including all complaints and any reports currently in the*
+ *possession of the department or agency.* All complaints retained
+ pursuant to this subdivision may be maintained 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, in accordance with all applicable requirements
+ of law. However, prior to any official determination regarding
+ promotion, transfer, or disciplinary action by an officer’s
+ employing department or agency, the complaints described by
+ subdivision (c) shall be removed from the officer’s general
+ personnel file and placed in separate file designated by the
+ department or agency, in accordance with all applicable
+ requirements of law.

+ (c) Complaints by members of the public that are determined
+ by the peace or custodial officer’s employing agency to be
+ frivolous, as defined in Section 128.5 of the Code of Civil
+ Procedure, 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 (Chapter 3.5
+ (commencing with Section 6250) of Division 7 of Title 1 of the
+ Government Code) and Section 1043 of the Evidence Code.

+ (1) Management of the peace or custodial officer’s employing
+ agency shall have access to the files described in this subdivision.

+ (2) Management of the peace or custodial officer’s employing
+ agency shall not use the complaints contained in these separate
+ files for punitive or promotional purposes except as permitted by
+ subdivision (f) of Section 3304 of the Government Code.

+ (3) Management of the peace or custodial officer’s employing
+ agency may identify any officer who is subject to the complaints
+ maintained in these files which require counseling or additional
+ training. However, if a complaint is removed from the officer’s

+ personnel file, any reference in the personnel file to the complaint
+ or to a separate file shall be deleted.

+ (d) As used in this section, the following definitions apply:

+ (1) "General personnel file" means 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.

+ (2) "Unfounded" means that the investigation clearly established
+ that the allegation is not true.

+ (3) "Exonerated" means that the investigation clearly established
+ that the actions of the peace or custodial officer that formed the
+ basis for the complaint are not violations of law or department
+ policy.

+ SEC. 3. Section 832.7 of the Penal Code is amended to read:

+ 832.7. (a) Except as provided in subdivision (b), the personnel
+ records of peace officers and custodial officers and records
+ maintained by ~~any~~ a 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~~ does 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.

+ (b) (1) Notwithstanding subdivision (a), subdivision (f) of
+ Section 6254 of the Government Code, or any other law, the
+ following peace officer or custodial officer personnel records and
+ records maintained by ~~any~~ a state or local agency shall not be
+ confidential and shall be made available for public inspection
+ pursuant to the California Public Records Act (Chapter 3.5
+ (commencing with Section 6250) of Division 7 of Title 1 of the
+ Government Code):

+ (A) A record relating to the report, investigation, or findings of
+ any of the following:

+ (i) An incident involving the discharge of a firearm at a person
+ by a peace officer or custodial officer.

+ (ii) An incident ~~in which~~ involving the use of force by a peace
+ officer or custodial officer against a ~~person resulted in death, or~~

+ ~~in great bodily injury.~~ *person, provided that the underlying*
+ *complaint was not determined to be frivolous.*

+ (B) (i) Any record relating to an incident in which ~~a sustained~~
+ ~~finding was made by any law enforcement agency or oversight~~
+ ~~agency~~ *that a peace officer or custodial officer engaged in sexual*
+ *assault involving a member of the ~~public.~~ public, provided that*
+ *the underlying complaint was not determined to be frivolous.*

+ (ii) As used in this subparagraph, “sexual assault” means the
+ commission or attempted initiation of a sexual act with a member
+ of the public by means of force, threat, coercion, extortion, offer
+ of leniency or other official favor, or under the color of authority.
+ For purposes of this definition, the propositioning for or
+ commission of any sexual act while on duty is considered a sexual
+ assault.

+ (iii) As used in this subparagraph, “member of the public” means
+ any person not employed by the officer’s employing agency and
+ includes any participant in a cadet, explorer, or other youth program
+ affiliated with the agency.

+ (C) Any record relating to an incident ~~in which a sustained~~
+ ~~finding was made by any law enforcement agency or oversight~~
+ ~~agency~~ *of involving dishonesty by a peace officer or custodial*
+ *officer directly relating to the reporting, investigation, or*
+ *prosecution of a crime, or directly relating to the reporting of, or*
+ *investigation of misconduct by, another peace officer or custodial*
+ *officer, including, but not limited to, any sustained finding of*
+ *perjury, false statements, filing false reports, destruction, falsifying,*
+ *or concealing of ~~evidence.~~ evidence, provided that the underlying*
+ *complaint was not determined to be frivolous.*

+ (D) *Any record relating to an incident, including, but not limited*
+ *to, verbal statements, writings, online posts, recordings, and*
+ *gestures, involving prejudice or discrimination against a person*
+ *on the basis of race, religious creed, color, national origin,*
+ *ancestry, physical disability, mental disability, medical condition,*
+ *genetic information, marital status, sex, gender, gender identity,*
+ *gender expression, age, sexual orientation, or military and veteran*
+ *status, provided the underlying complaint was not determined to*
+ *be frivolous.*

+ (E) *Any record relating to an incident in which a sustained*
+ *finding was made by any law enforcement agency or oversight*

+ *agency that the peace officer made a wrongful arrest or conducted a wrongful search.*

+ (2) Records that shall be released pursuant to this subdivision include all investigative reports; photographic, audio, and video evidence; transcripts or recordings of interviews; autopsy reports; all materials compiled and presented for review to the district attorney or to any person or body charged with determining whether to file criminal charges against an officer in connection with an incident, ~~or~~ whether the officer's action was consistent with law and agency policy for purposes of discipline or administrative action, or what discipline to impose or corrective action to take; documents setting forth findings or recommended findings; and copies of disciplinary records relating to the incident, including any letters of intent to impose discipline, any documents reflecting modifications of discipline due to the Skelly or grievance process, and letters indicating final imposition of discipline or other documentation reflecting implementation of corrective action. *Records that shall be released pursuant to this subdivision also include records relating to an incident specified in paragraph (1) in which the peace officer or custodial officer resigned before the law enforcement agency or oversight agency concluded its investigation into the alleged incident.*

+ (3) A record from a separate and prior investigation or assessment of a separate incident shall not be released unless it is independently subject to disclosure pursuant to this subdivision.

+ (4) If an investigation or incident involves multiple officers, information about allegations of misconduct by, or the analysis or disposition of an investigation of, an officer shall not be released pursuant to subparagraph (B) or (C) of paragraph (1), unless it relates to a sustained finding against that officer. However, factual information about that action of an officer during an incident, or the statements of an officer about an incident, shall be released if they are relevant to a sustained finding against another officer that is subject to release pursuant to subparagraph (B) or (C) of paragraph (1).

+ (5) An agency shall redact a record disclosed pursuant to this section only for any of the following purposes:

+ (A) To remove personal data or information, such as a home address, telephone number, or identities of family members, other

- + than the names and work-related information of peace and custodial officers.
- + (B) To preserve the anonymity of complainants and witnesses.
- + (C) To protect confidential medical, financial, or other information of which disclosure is specifically prohibited by federal law or would cause an unwarranted invasion of personal privacy that clearly outweighs the strong public interest in records about misconduct and serious use of force by peace officers and custodial officers.
- + (D) Where there is a specific, articulable, and particularized reason to believe that disclosure of the record would pose a significant danger to the physical safety of the peace officer, custodial officer, or another person.
- + (6) Notwithstanding paragraph (5), an agency may redact a record disclosed pursuant to this section, including personal identifying information, where, on the facts of the particular case, the public interest served by not disclosing the information clearly outweighs the public interest served by disclosure of the information.
- + (7) An agency may withhold a record of an incident described in subparagraph (A) of paragraph (1) that is the subject of an active criminal or administrative investigation, in accordance with any of the following:
 - + (A) (i) During an active criminal investigation, disclosure may be delayed for up to 60 days from the date the use of force occurred or until the district attorney determines whether to file criminal charges related to the use of force, whichever occurs sooner. If an agency delays disclosure pursuant to this clause, the agency shall provide, in writing, the specific basis for the agency’s determination that the interest in delaying disclosure clearly outweighs the public interest in disclosure. This writing shall include the estimated date for disclosure of the withheld information.
 - + (ii) After 60 days from the use of force, the agency may continue to delay the disclosure of records or information if the disclosure could reasonably be expected to interfere with a criminal enforcement proceeding against an officer who used the force. If an agency delays disclosure pursuant to this clause, the agency shall, at 180-day intervals as necessary, provide, in writing, the specific basis for the agency’s determination that disclosure could

+ reasonably be expected to interfere with a criminal enforcement proceeding. The writing shall include the estimated date for the disclosure of the withheld information. Information withheld by the agency shall be disclosed when the specific basis for withholding is resolved, when the investigation or proceeding is no longer active, or by no later than 18 months after the date of the incident, whichever occurs sooner.

+ (iii) After 60 days from the use of force, the agency may continue to delay the disclosure of records or information if the disclosure could reasonably be expected to interfere with a criminal enforcement proceeding against someone other than the officer who used the force. If an agency delays disclosure under this clause, the agency shall, at 180-day intervals, provide, in writing, the specific basis why disclosure could reasonably be expected to interfere with a criminal enforcement proceeding, and shall provide an estimated date for the disclosure of the withheld information. Information withheld by the agency shall be disclosed when the specific basis for withholding is resolved, when the investigation or proceeding is no longer active, or by no later than 18 months after the date of the incident, whichever occurs sooner, unless extraordinary circumstances warrant continued delay due to the ongoing criminal investigation or proceeding. In that case, the agency must show by clear and convincing evidence that the interest in preventing prejudice to the active and ongoing criminal investigation or proceeding outweighs the public interest in prompt disclosure of records about use of serious force by peace officers and custodial officers. The agency shall release all information subject to disclosure that does not cause substantial prejudice, including any documents that have otherwise become available.

+ (iv) In an action to compel disclosure brought pursuant to Section 6258 of the Government Code, an agency may justify delay by filing an application to seal the basis for withholding, in accordance with Rule 2.550 of the California Rules of Court, or any successor ~~rule thereto~~, *rule*, if disclosure of the written basis itself would impact a privilege or compromise a pending investigation.

+ (B) If criminal charges are filed related to the incident in which force was used, the agency may delay the disclosure of records or information until a verdict on those charges is returned at trial or,

+ if a plea of guilty or no contest is entered, the time to withdraw
+ the plea pursuant to Section 1018.

+ (C) During an administrative investigation into an incident
+ described in subparagraph (A) of paragraph (1), the agency may
+ delay the disclosure of records or information until the investigating
+ agency determines whether the use of force violated a law or
+ agency policy, but no longer than 180 days after the date of the
+ employing agency’s discovery of the use of force, or allegation of
+ use of force, by a person authorized to initiate an investigation, or
+ 30 days after the close of any criminal investigation related to the
+ peace officer or custodial officer’s use of force, whichever is later.

+ (8) A record of a civilian complaint, or the investigations,
+ findings, or dispositions of that complaint, shall not be released
+ pursuant to this section if the complaint is frivolous, as defined in
+ Section 128.5 of the Code of Civil Procedure, or if the complaint
+ is unfounded.

+ (9) *The cost of copies of records subject to disclosure pursuant
+ to this subdivision that are made available upon the payment of
+ fees covering direct costs of duplication pursuant to subdivision
+ (b) of Section 6253 of the Government Code shall not include the
+ costs of editing or redacting the records.*

+ (10) *For every day beyond 30 days after the date which a record
+ is to be disclosed, as required by this subdivision, an agency shall
+ be subject to a civil fine of one thousand dollars (\$1,000) per day
+ for each day that the records are not disclosed.*

+ (11) *A member of the public who files a suit pursuant to Section
+ 6258 of the Government Code for records required by this
+ subdivision that are found to have been improperly withheld or
+ improperly redacted shall be entitled to damages equal to twice
+ the party’s reasonable costs and attorney’s fees.*

+ (12) *For purposes of releasing records pursuant to this
+ subdivision, the attorney-client privilege shall not be asserted to
+ limit the disclosure of factual information provided by the public
+ entity to its attorney, factual information discovered by any
+ investigation done by the public entity’s attorney, or billing records
+ related to the work done by the attorney.*

+ (c) Notwithstanding subdivisions (a) and (b), a department or
+ agency shall release to the complaining party a copy of ~~his or her~~
+ *the complaining party’s own statements at the time the complaint*
+ is filed.

+ (d) Notwithstanding subdivisions (a) and (b), 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.

+ (e) Notwithstanding subdivisions (a) and (b), 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~~
+ *they know* 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~~ *their*
+ agent or representative.

+ (f) (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 is 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.

+ (g) This section does not 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.

+ (h) This section does not supersede or affect the criminal
+ discovery process outlined in Chapter 10 (commencing with
+ Section 1054) of Title 6 of Part 2, or the admissibility of personnel
+ records pursuant to subdivision (a), which codifies the court
+ decision in *Pitchess v. Superior Court* (1974) 11 Cal.3d 531.

+ (i) Nothing in this chapter is intended to limit the public's right
+ of access as provided for in *Long Beach Police Officers*
+ *Association v. City of Long Beach* (2014) 59 Cal.4th 59.

+ SEC. 4. Section 832.12 of the Penal Code is amended to read:
 + 832.12. (a) Each department or agency in this state that
 + employs peace officers shall make a record of any investigations
 + of misconduct involving a peace officer in ~~his or her~~ *the officer's*
 + general personnel file or a separate file designated by the
 + department or agency. A peace officer seeking employment with
 + a department or agency in this state that employs peace officers
 + shall give written permission for the hiring department or agency
 + to view ~~his or her~~ *the officer's* general personnel file and any
 + separate file designated by a department or agency.

+ (b) Prior to employing any peace officer, each department or
 + agency in this state that employs peace officers shall request, and
 + the hiring department or agency shall review, any records made
 + available pursuant to subdivision (a).

+ SEC. 5. Section 832.13 is added to the Penal Code, to read:

+ 832.13. Every person employed as a peace officer shall
 + immediately report all uses of force by the officer to the officer's
 + department or agency.

+ SEC. 6. 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.

1 SECTION 1. ~~Section 66024.5 is added to the Education Code,~~
 2 ~~to read:~~

3 ~~66024.5. (a) This section shall apply to all segments of~~
 4 ~~postsecondary education in this state.~~

5 ~~(b) A postsecondary educational institution shall not inquire~~
 6 ~~about a prospective student's criminal history on an initial~~
 7 ~~application form or at any time during the admissions process~~
 8 ~~before the institution's final decision relative to the prospective~~
 9 ~~student's application for admission.~~

10 SEC. 2. ~~If the Commission on State Mandates determines that~~
 11 ~~this act contains costs mandated by the state, reimbursement to~~
 12 ~~local agencies and school districts for those costs shall be made~~
 13 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~
 14 ~~4 of Title 2 of the Government Code.~~

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Amendment 3