

18 APR 19 PM 3:20

DRAFT

City Attorney's Office

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

INTRODUCED BY COUNCILMEMBER DAN KALB

RESOLUTION IN SUPPORT OF SENATE BILL 1421 (SKINNER) THAT WOULD REQUIRE CERTAIN RECORDS OF PEACE OFFICER OR CUSTODIAL OFFICER PERSONNEL AND RECORDS RELATING TO SPECIFIED INCIDENTS, COMPLAINTS, AND INVESTIGATIONS INVOLVING PEACE OFFICERS AND CUSTODIAL OFFICERS TO BE MADE AVAILABLE FOR PUBLIC INSPECTION PURSUANT TO THE CALIFORNIA PUBLIC RECORDS ACT

WHEREAS, California is one of the most secretive states in the nation when it comes to public access to law enforcement records, including prohibiting public access to disciplinary records related to matters such as improper use of force or on-the-job misconduct; and

WHEREAS, many states recognize that disclosure of critical incidents is a basic aspect of police oversight, with 28 allowing some access to internal investigation records and 15 allowing access to a limited set of disciplinary records; and

WHEREAS, providing more transparency can create a better level of trust between peace officers and the communities they serve; and

WHEREAS, Senate Bill (SB) 1421 (Skinner) would allow public access for records relating to (1) law enforcement discharge of a firearm or conducted energy device, (2) law enforcement use of force that causes or is likely to cause death or serious bodily injury, and (3) completed investigation of verified on the job sexual assault and verified job related dishonesty including perjury, false statements, false reports, and evidence tampering by law enforcement; and

WHEREAS, SB 1421 is supported by numerous groups and organizations, including the ACLU, Black Lives Matter – California, Cal-Aware, California Public Defenders Association, Ella Baker Center, Oakland Privacy, PolicyLink, Youth Alive, and many others; now, therefore be it

RESOLVED: That the Oakland City Council hereby endorses SB 1421 and urges the California State Legislature and Governor Jerry Brown to support its enactment into law.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, CAMPBELL WASHINGTON, GALLO, GIBSON MCELHANEY, GUILLÉN, KALB, KAPLAN, AND PRESIDENT REID

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____
LATONDA SIMMONS
City Clerk and Clerk of the Council of
the City of Oakland, California

18 APR 19 PM 3:20



Councilmember Dan Kalb

CITY OF OAKLAND

CITY HALL - ONE FRANK H. OGAWA PLAZA, 2ND FLOOR - OAKLAND - CALIFORNIA 94612

Agenda Memorandum

To: Rules & Legislation Committee

From: Councilmembers Dan Kalb

Date: April 19, 2018

Subject: Support of SB 1421: Police Disciplinary Record Bill

Colleagues on the City Council and Members of the Public,

With our Resolution of Support for SB 1421 (Skinner), we are submitting the attached Fact Sheet, text of the bill, and bill analysis by the Senate Committee on Public Safety.

Respectfully submitted,

A handwritten signature in black ink that reads "Dan Kalb".

Dan Kalb, Councilmember

Senate Bill 1421

Protecting Communities and Law Enforcement

Senator Nancy Skinner (SD 9) As Amended April 2018

FILED
OFFICE OF THE CITY CLERK
OAKLAND

18 APR 19 PM 3:21

THIS BILL

SB 1421 will allow public access to the investigation records related to a law enforcement officer's use of deadly force, discharge of a firearm, on the job sexual assault, or work-related dishonesty.

ISSUE

California is one of the most secretive states in the nation when it comes to public access to law enforcement records. As a result, the public cannot access, for example, records related to officer-involved shootings, or when an officer has been found to commit sexual assault on the job. In contrast there is public access to records, including disciplinary actions, for all other categories of public employees.

California is an outlier. Many states recognize that disclosure of critical incidents is a basic element of peace officer oversight, with 28 allowing some access to peace officer internal investigation records. Alabama, Connecticut, Minnesota, North Dakota, Ohio, Arizona, Florida, Georgia, Maine, Wisconsin, Utah, and Washington, for example, have disclosure laws that are more extensive than what is being proposed in SB 1421. In addition to these 12 states, 15 states allow for disclosure of a limited set of disciplinary records, as is proposed in SB 1421.

The vast majority of California peace officers have excellent records and have never used serious force. Providing a level of transparency can create better trust as well as accountability between local agencies and the communities they serve.

SOLUTION

SB 1421 allows the public to access records relating to law enforcement:

- Discharge of a firearm
- Use of force that causes or is likely to cause death or serious bodily injury
- Completed investigation of verified on the job sexual assault and verified job related dishonesty including perjury, false statements, false reports, and evidence tampering

To account for privacy and safety interests, SB 1421 allows withholding these records if there is a risk of danger to an officer or someone else, or if disclosure would represent an unwarranted invasion of an officer's privacy.

CONTACT

John Skoglund, Office of Senator Nancy Skinner
916-651-4009 john.skoglund@sen.ca.gov

SUPPORT

Advancement Project
Advancing Justice – Asian Law Caucus
AF3IRM Los Angeles
AFSCME Local 3299
Alliance for Boys and Men of Color (Co-Sponsor)
Alliance San Diego
American Civil Liberties Union (Co-Sponsor)
American Friends Service Committee
Anaheim Community Coalition
Anti-Police Terror Project (Co-Sponsor)
Anti-Recidivism Coalition
Arab American Civic Council
Asian Americans Advancing Justice
Asian Law Alliance
Bend the Arc: Jewish Action
Black American Political Assoc of California
The Black Jewish Alliance
Black Lives Matter – California (Co-Sponsor)
Cage-Free Repair
CA Alliance for Youth and Community Justice
CA Broadcasters Association
CA Coalition for Women Prisoners
CA Faculty Association (Co-Sponsor)
CA Federation of Teachers
CA Immigrant Policy Center
CA Immigrant Youth Justice Alliance
CA Latinas for Reproductive Justice
CA News Publishers Association (Co-Sponsor)
California Nurses Association (CNA)
Californians Aware
Californians for Justice
California Public Defenders Association
Californians United for a Responsible Budget
CDTech
Center for Juvenile and Criminal Justice

Chican@s Unidos
 Children's Defense Fund
 Chispa
 Church in Ocean Park
 Climate Action Campaign
 Critical Resistance
 Coalition for Justice and Accountability
 Committee for Racial Justice (CRJ)
 Communities United for Restorative Youth Justice
 (Co-sponsor)
 Community Coalition
 Conference of California Bar Associations
 Council on American-Islamic Relations, California
 Courage Campaign
 CTTT
 Davis People Power
 Drain the NRA
 Dignity and Power Now
 East Bay Community Law Center
 The Education Trust-West
 Ella Baker Center for Human Rights
 Earl B. Gilliam Bar Association
 Equal Justice Society
 Equity for Santa Barbara
 Fannie Lou Hamer Institute
 First Amendment Coalition
 Greater Long Beach Interfaith Community
 Organization
 Homeboy Industries
 Immigrant Legal Resource Center
 Immigrant Youth Coalition
 Indivisible CA: StateStrong
 InnerCity Struggle
 Interfaith Worker Justice San Diego
 IUCC Advocates for Peace and Justice
 Jack and Jill America, San Diego
 Journey House
 Korea Town Immigrant Workers Alliance
 LA Voice
 LAANE
 Law Enforcement Accountability Network
 Lawyers Cmte for Civil Rights, SF Bay Area
 Legal Services for Prisoners with Children
 Media Alliance
 Mexican Legal Defense & Education Fund
 Mid-City CAN
 Mother's Quest
 National Juvenile Justice Network
 National Lawyers Guild, Los Angeles
 National Lawyers Guild, SF Bay Area
 A New Path
 A New Way of Life Re-entry Project (ANWOL)



Oak View ComUNIDAD
 Oakland Privacy
 Orange County Communities Organized for
 Responsible Development
 Orange County Equality Coalition
 Partnership for Advancement of NewAmericans
 PICO California (Co-Sponsor)
 PolicyLink
 Press4Word
 Prevention Institute
 Public Health Justice Collective
 R Street Institute
 Reporters Committee for Freedom of the Press
 Resilience Orange County
 Riverside Coalition for Police Accountability
 Riverside Temple Beth El
 Root and Rebound
 San Diego Organizing Project
 San Diego Unified School District
 San Francisco District Attorney George Gascon
 San Francisco Public Defender Jeff Adachi
 Santa Ana Building Healthy Communities
 SEIU Local 100
 Services, Immigrant Rights & Education Network
 (SIREN)
 Showing Up for Racial Justice, Long Beach
 Showing Up for Racial Justice, Marin
 Showing Up for Racial Justice, Rural-NorCal
 Showing Up for Racial Justice, Sacramento
 Showing Up for Racial Justice, Santa Barbara
 Silicon Valley De-Bug
 Southeast Asia Resource Action Center
 Stop LAPD Spying Coalition
 Street Level Health Project
 Think Dignity
 Transgender Law Center
 UAW 286, UC Student-Workers Union
 UNITE HERE Local 11
 Urban Peace Institute
 Urban Peace Movement
 Village Connect
 The W. Haywood Burns Institute
 White People for Black Lives/AWARE LA
 Women for: Orange County
 Women Foundation of California
 Young Women's Freedom Center
 Youth Alive
 Youth Justice Coalition (Co-sponsor)

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AMENDED IN SENATE APRIL 2, 2018

SENATE BILL

No. 1421

Introduced by Senator Skinner

**(Coauthors: Senators Mitchell, Bradford, Glazer, Hill, Moorlach,
and Wieckowski)**

(Coauthor: Assembly Member Weber)

February 16, 2018

An act to amend ~~Section 1203.4~~ Sections 832.7 and 832.8 of the Penal Code, relating to ~~criminal procedure~~ peace officer records.

LEGISLATIVE COUNSEL'S DIGEST

SB 1421, as amended, Skinner. ~~Criminal procedure: sentencing.~~
Peace officers: release of records.

The California Public Records Act requires a state or local agency, as defined, to make public records available for inspection, subject to certain exceptions. Existing law requires any peace officer or custodial officer personnel records, as defined, and any records maintained by any state or local agency relating to complaints against peace officers and custodial officers, or any information obtained from these records, to be confidential and prohibits the disclosure of those records in any criminal or civil proceeding, except by discovery. Existing law describes exceptions to this requirement for investigations or proceedings concerning the conduct of peace officers or custodial officers, and for an agency or department that employs those officers, conducted by a grand jury, a district attorney's office, or the Attorney General's office.

This bill would require, notwithstanding any other law, certain peace officer or custodial officer personnel records and records relating to specified incidents, complaints, and investigations involving peace officers and custodial officers to be available for public inspection

pursuant to the California Public Records Act. The bill would provide that this information includes, but is not limited to, the framing allegation or complaint, any facts or evidence collected or considered, and any findings or recommended findings, discipline, or corrective action taken. The bill would require records disclosed pursuant to this provision to be redacted only 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 officers and custodial officers, to preserve the anonymity of complainants and witnesses, or to protect confidential medical, financial, or other information in which disclosure would cause an unwarranted invasion of personal privacy that clearly outweighs the strong public interest in records about misconduct by peace officers and custodial officers, or where there is a specific, particularized reason to believe that disclosure would pose a significant danger to the physical safety of the peace officer, custodial officer, or others.

The California Constitution requires local agencies, for the purpose of ensuring public access to the meetings of public bodies and the writings of public officials and agencies, to comply with a statutory enactment that amends or enacts laws relating to public records or open meetings and contains findings demonstrating that the enactment furthers the constitutional requirements relating to this purpose.

This bill would make legislative findings to that effect.

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 no reimbursement is required by this act for a specified reason.

Existing law permits a defendant to withdraw his or her plea of guilty or plea of nolo contendere and enter a plea of not guilty if he or she has fulfilled the conditions of probation for the entire period of probation, has been discharged prior to the termination of the period of probation, has been convicted of a misdemeanor and not granted probation and has fully complied with and performed the sentence of the court, or has been sentenced to a county jail for a felony, or if a court, in its discretion and the interests of justice, determines that a defendant should be granted this or other specified relief. In either case, existing law releases the defendant from all penalties and disabilities resulting from the offense of which he or she has been convicted. Existing law makes this relief

~~unavailable if the defendant has committed any one of specified offenses.~~

~~This bill would make technical, nonsubstantive changes to those provisions.~~

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:

1 SECTION 1. *The Legislature finds and declares all of the*
2 *following:*

3 (a) *Peace officers help to provide one of our state's most*
4 *fundamental government services. To empower peace officers to*
5 *fulfill their mission, the people of California vest them with*
6 *extraordinary authority — the powers to detain, search, arrest,*
7 *and use deadly force. Our society depends on peace officers'*
8 *faithful exercise of that authority. Misuse of that authority can*
9 *lead to grave constitutional violations, harms to liberty and the*
10 *inherent sanctity of human life, as well as significant public unrest.*

11 (b) *The public has a right to know all about serious police*
12 *misconduct, as well as about officer-involved shootings and other*
13 *serious uses of force. Concealing crucial public safety matters*
14 *such as officer violations of civilians' rights, or inquiries into*
15 *deadly use of force incidents, undercuts the public's faith in the*
16 *legitimacy of law enforcement, makes it harder for tens of*
17 *thousands of hardworking peace officers to do their jobs, and*
18 *endangers public safety.*

19 SEC. 2. *Section 832.7 of the Penal Code is amended to read:*

20 832.7. (a) ~~Peace officer or custodial officer~~ *Except as provided*
21 *in subdivision (b), the personnel records of peace officers and*
22 *custodial officers and records maintained by any state or local*
23 *agency pursuant to Section 832.5, or information obtained from*
24 *these records, are confidential and shall not be disclosed in any*
25 *criminal or civil proceeding except by discovery pursuant to*
26 *Sections 1043 and 1046 of the Evidence Code. This section shall*
27 *not apply to investigations or proceedings concerning the conduct*
28 *of peace officers or custodial officers, or an agency or department*
29 *that employs those officers, conducted by a grand jury, a district*
30 *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 state or local agency shall not be confidential and shall be 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 involving the discharge of an electronic control weapon or conducted energy device at or upon a person by a peace officer or custodial officer.

(iii) An incident involving a strike with an impact weapon or projectile to the head or neck of a person by a peace officer or custodial officer.

(iv) An incident in which the use of force by a peace officer or custodial officer against a person resulted in death, or in serious bodily injury, as defined in subdivision (f) of Section 243.

(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.

(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 dishonesty by a peace officer or custodial officer relating to the reporting, investigation, or prosecution of a crime, or

1 relating to the reporting of, or investigation of misconduct by,
2 another peace officer or custodial officer, including, but not limited
3 to, any sustained finding of perjury, false statements, filing false
4 reports, destruction, falsifying, or concealing of evidence, or any
5 other dishonesty that undermines the integrity of the criminal
6 justice system.

7 (2) Records that shall be released pursuant to this subdivision
8 include, but are not limited to, the framing allegations or complaint
9 and any facts or evidence collected or considered, any report of
10 the investigation or analysis of the evidence or the conduct, and
11 any findings or recommended findings, discipline, or corrective
12 action taken.

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

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

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

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

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

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

38 (D) Where there is a specific, articulable, and particularized
39 reason to believe that disclosure of the record would pose a

1 *significant danger to the physical safety of the peace officer,*
2 *custodial officer, or another person.*

3 (6) *An agency may withhold a record that is disclosable*
4 *pursuant to this subdivision during an investigation into the use*
5 *of force by a peace officer until the investigating agency determines*
6 *whether the use of force violated a law or agency policy and until*
7 *the district attorney determines whether to file criminal charges*
8 *for the use of force. However, in no case may an agency withhold*
9 *that record for longer than 180 days from the date of the use of*
10 *force.*

11 (b)

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

15 (e)

16 (d) ~~Notwithstanding subdivision (a), subdivisions (a) and (b),~~
17 ~~a department or agency that employs peace or custodial officers~~
18 ~~may disseminate data regarding the number, type, or disposition~~
19 ~~of complaints (sustained, not sustained, exonerated, or unfounded)~~
20 ~~made against its officers if that information is in a form which~~
21 ~~does not identify the individuals involved.~~

22 (d)

23 (e) ~~Notwithstanding subdivision (a), subdivisions (a) and (b),~~
24 ~~a department or agency that employs peace or custodial officers~~
25 ~~may release factual information concerning a disciplinary~~
26 ~~investigation if the officer who is the subject of the disciplinary~~
27 ~~investigation, or the officer's agent or representative, publicly~~
28 ~~makes a statement he or she knows to be false concerning the~~
29 ~~investigation or the imposition of disciplinary action. Information~~
30 ~~may not be disclosed by the peace or custodial officer's employer~~
31 ~~unless the false statement was published by an established medium~~
32 ~~of communication, such as television, radio, or a newspaper.~~
33 ~~Disclosure of factual information by the employing agency~~
34 ~~pursuant to this subdivision is limited to facts contained in the~~
35 ~~officer's personnel file concerning the disciplinary investigation~~
36 ~~or imposition of disciplinary action that specifically refute the false~~
37 ~~statements made public by the peace or custodial officer or his or~~
38 ~~her agent or representative.~~

39 (e)

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

4 (2) The notification described in this subdivision shall not be
5 conclusive or binding or admissible as evidence in any separate
6 or subsequent action or proceeding brought before an arbitrator,
7 court, or judge of this state or the United States.

8 ~~(f) Nothing in this section shall~~

9 (g) *This section does not* affect the discovery or disclosure of
10 information contained in a peace or custodial officer's personnel
11 file pursuant to Section 1043 of the Evidence Code.

12 SEC. 3. Section 832.8 of the Penal Code is amended to read:

13 832.8. As used in Section 832.7, ~~"personnel records"~~ the
14 following words or phrases have the following meanings:

15 (a) "Personnel records" means any file maintained under that
16 individual's name by his or her employing agency and containing
17 records relating to any of the following:

18 ~~(a)~~

19 (1) Personal data, including marital status, family members,
20 educational and employment history, home addresses, or similar
21 information.

22 ~~(b)~~

23 (2) Medical history.

24 ~~(c)~~

25 (3) Election of employee benefits.

26 ~~(d)~~

27 (4) Employee advancement, appraisal, or discipline.

28 ~~(e)~~

29 (5) Complaints, or investigations of complaints, concerning an
30 event or transaction in which he or she participated, or which he
31 or she perceived, and pertaining to the manner in which he or she
32 performed his or her duties.

33 ~~(f)~~

34 (6) Any other information the disclosure of which would
35 constitute an unwarranted invasion of personal privacy.

36 (b) "Sustained" means a final determination by an investigating
37 agency, commission, board, hearing officer, or arbitrator, as
38 applicable, following an investigation and opportunity for an
39 administrative appeal pursuant to Sections 3304 and 3304.5 of

1 the Government Code, that the actions of the peace officer or
2 custodial officer were found to violate law or department policy.

3 SEC. 4. The Legislature finds and declares that Section 2 of
4 this act, which amends Section 832.7 of the Penal Code, furthers,
5 within the meaning of paragraph (7) of subdivision (b) of Section
6 3 of Article I of the California Constitution, the purposes of that
7 constitutional section as it relates to the right of public access to
8 the meetings of local public bodies or the writings of local public
9 officials and local agencies. Pursuant to paragraph (7) of
10 subdivision (b) of Section 3 of Article I of the California
11 Constitution, the Legislature makes the following findings:

12 The public has a strong, compelling interest in law enforcement
13 transparency because it is essential to having a just and democratic
14 society.

15 SEC. 5. No reimbursement is required by this act pursuant to
16 Section 6 of Article XIII B of the California Constitution because
17 the only costs that may be incurred by a local agency or school
18 district under this act would result from a legislative mandate that
19 is within the scope of paragraph (7) of subdivision (b) of Section
20 3 of Article I of the California Constitution.

21 SECTION 1. Section 1203.4 of the Penal Code is amended to
22 read:

23 1203.4. (a) (1) In any case in which a defendant has fulfilled
24 the conditions of probation for the entire period of probation, or
25 has been discharged prior to the termination of the period of
26 probation, or in any other case in which a court, in its discretion
27 and the interests of justice, determines that a defendant should be
28 granted the relief available under this section, the defendant shall,
29 at any time after the termination of the period of probation, if he
30 or she is not then serving a sentence for any offense, on probation
31 for any offense, or charged with the commission of any offense,
32 be permitted by the court to withdraw his or her guilty or nolo
33 contendere plea and enter a plea of not guilty; or, if he or she has
34 been convicted after a plea of not guilty, the court shall set aside
35 the verdict of guilty; and, in either case, the court shall thereupon
36 dismiss the accusations or information against the defendant and
37 except as noted below, he or she shall thereafter be released from
38 all penalties and disabilities resulting from the offense of which
39 he or she has been convicted, except as provided in Section 13555
40 of the Vehicle Code. The probationer shall be informed, in his or

1 her probation papers, of this right and privilege and his or her right,
2 if any, to petition for a certificate of rehabilitation and pardon. The
3 probationer may make the application and change of plea in person
4 or by attorney, or by the probation officer authorized in writing.
5 However, in any subsequent prosecution of the defendant for any
6 other offense, the prior conviction may be pleaded and proved and
7 shall have the same effect as if probation had not been granted or
8 the accusation or information dismissed. The order shall state, and
9 the probationer shall be informed, that the order does not relieve
10 him or her of the obligation to disclose the conviction in response
11 to any direct question contained in any questionnaire or application
12 for public office, for licensure by any state or local agency, or for
13 contracting with the California State Lottery Commission.

14 ~~(2) Dismissal of an accusation or information pursuant to this~~
15 ~~section does not permit a person to own, possess, or have in his or~~
16 ~~her custody or control any firearm or prevent his or her conviction~~
17 ~~under Chapter 2 (commencing with Section 29800) of Division 9~~
18 ~~of Title 4 of Part 6.~~

19 ~~(3) Dismissal of an accusation or information underlying a~~
20 ~~conviction pursuant to this section does not permit a person~~
21 ~~prohibited from holding public office as a result of that conviction~~
22 ~~to hold public office.~~

23 ~~(4) This subdivision shall apply to all applications for relief~~
24 ~~under this section which are filed on or after November 23, 1970.~~

25 ~~(b) Subdivision (a) of this section does not apply to any~~
26 ~~misdemeanor that is within the provisions of Section 42002.1 of~~
27 ~~the Vehicle Code, to any violation of subdivision (c) of Section~~
28 ~~286, Section 288, subdivision (c) of Section 288a, Section 288.5,~~
29 ~~subdivision (j) of Section 289, Section 311.1, 311.2, 311.3, or~~
30 ~~311.11, or any felony conviction pursuant to subdivision (d) of~~
31 ~~Section 261.5, or to any infraction.~~

32 ~~(c) (1) Except as provided in paragraph (2), subdivision (a)~~
33 ~~does not apply to a person who receives a notice to appear or is~~
34 ~~otherwise charged with a violation of an offense described in~~
35 ~~subdivisions (a) to (c), inclusive, of Section 12810 of the Vehicle~~
36 ~~Code.~~

37 ~~(2) If a defendant who was convicted of a violation listed in~~
38 ~~paragraph (1) petitions the court, the court in its discretion and in~~
39 ~~the interests of justice, may order the relief provided pursuant to~~
40 ~~subdivision (a) to that defendant.~~

1 (d) A person who petitions for a change of plea or setting aside
2 of a verdict under this section may be required to reimburse the
3 court for the actual costs of services rendered, whether or not the
4 petition is granted and the records are sealed or expunged, at a rate
5 to be determined by the court not to exceed one hundred fifty
6 dollars (\$150), and to reimburse the county for the actual costs of
7 services rendered, whether or not the petition is granted and the
8 records are sealed or expunged, at a rate to be determined by the
9 county board of supervisors not to exceed one hundred fifty dollars
10 (\$150), and to reimburse any city for the actual costs of services
11 rendered, whether or not the petition is granted and the records are
12 sealed or expunged, at a rate to be determined by the city council
13 not to exceed one hundred fifty dollars (\$150). Ability to make
14 this reimbursement shall be determined by the court using the
15 standards set forth in paragraph (2) of subdivision (g) of Section
16 987.8 and shall not be a prerequisite to a person's eligibility under
17 this section. The court may order reimbursement in any case in
18 which the petitioner appears to have the ability to pay, without
19 undue hardship, all or any portion of the costs for services
20 established pursuant to this subdivision.

21 (e) (1) Relief shall not be granted under this section unless the
22 prosecuting attorney has been given 15 days' notice of the petition
23 for relief. The probation officer shall notify the prosecuting attorney
24 when a petition is filed, pursuant to this section.

25 (2) It shall be presumed that the prosecuting attorney has
26 received notice if proof of service is filed with the court.

27 (f) If, after receiving notice pursuant to subdivision (e), the
28 prosecuting attorney fails to appear and object to a petition for
29 dismissal, the prosecuting attorney may not move to set aside or
30 otherwise appeal the grant of that petition.

31 (g) Notwithstanding the above provisions or any other provision
32 of law, the Governor shall have the right to pardon a person
33 convicted of a violation of subdivision (c) of Section 286, Section
34 288, subdivision (c) of Section 288a, Section 288.5, or subdivision
35 (j) of Section 289, if there are extraordinary circumstances.

SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: SB 1421 Hearing Date: April 17, 2018
Author: Skinner
Version: April 2, 2018
Urgency: No Fiscal: Yes
Consultant: GC

Subject: *Peace Officers: Release of Records*

HISTORY

Source: Alliance for Boys and Men of Color
American Civil Liberties Union of California
Anti Police – Terror Project
Black Lives Matter – California
California Faculty Association
California News Publishers Association
Communities United for Restorative Youth Justice
PICO California
PolicyLink
Youth Justice Coalition

Prior Legislation: SB 1286 (Leno). 2016, failed passage in Senate Appropriations
SB 1019 (Romero), 2008, failed passage in Assembly Pub. Safety
AB 1648 (Leno), 2007, failed passage in Assembly Pub. Safety

Support: Advancement Project; AF3IRM Los Angeles; AFSCME Local 329; Alliance San Diego; American Friends Service Committee; Anaheim Community Coalition; Anti-Recidivism Coalition; Arab American Civic Council; Asian Americans Advancing Justice; Asian Law Alliance; Bend the Arc; Jewish Action; The Black Jewish Justice Alliance; Cage-Free Repair; California Alliance for Youth and Community Justice; California Broadcasters Association; California Church IMPACT; California Federation of Teachers, AFT, AFL-CIO; California Immigrant Policy Center; California Immigrant Youth Justice Alliance; California Latinas for Reproductive Justice; California Nurses Association; California Public Defenders Association; Californians Aware; Californians for Justice; Californians United for Responsible Budget; Catholic Worker Community; CDTech; Center for Juvenile and Criminal Justice; Chican@s Unidos; Children's Defense Fund; Chispa; Church in Ocean Park; Climate Action Campaign; Coalition for Justice and Accountability; Committee for Racial Justice (CRJ); Community Coalition; Conference of California Bar Associations; Council on American-Islamic Relations, California; Courage Campaign; Critical Resistance; CTT; Davis People Power; Dignity and Power No; Drain the NRA; Earl B. Gilliam Bar Association; East Bay Community Law Center; The Education Trust-West; Ella Baker Center for Human Rights; Equal Justice Society; Equity for Santa Barbara; Fannie Lou Hamer Institute; First Amendment Coalition; Friends Committee on Legislation of California; Greater Long Beach; Homeboy Industries; Immigrant Legal

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Resource Center; Indivisible CA; StateStrong; InnerCity Struggle; Interfaith Worker Justice San Diego; IUCC Advocates for Peace and Justice; Jack and Jill America of America, Incorporated, San Diego Chapter; Journey House; Koreatown Immigrant Workers Alliance; LA Voice; LAANE; Law Enforcement Accountability Network (LEAN); Lawyers Committee for Civil Rights, San Francisco Bay Area; Legal Services for Prisoners with Children; March and Rally Los Angeles; Media Alliance; Mexican Legal Defense and Education Fund (MALDEF); Mid-City CAN; Motivating Individual Leadership for Public Advancement; National Juvenile Justice Network; National Lawyers Guild, Los Angeles; National Lawyers Guild, San Francisco Bay Area; A New Path; A New Way of Life Re-entry Project (ANWOL); Oak View ComUNIDAD; Oakland Privacy; Orange County Communities Organized for Responsible Development; Orange County Equality Coalition; Partnership for the Advancement of New Americans; Press4Word; Prevention Institute; Public Health Justice Collective; R Street Institute; Reporters Committee for Freedom of the Press; Resilience Orange County; Richard Barrera, Trustee, Board of Education; San Diego Unified School District; Riverside Coalition for Police Accountability; Riverside Temple Beth El; Root and Rebound; San Diego LGBT Community Center; San Diego Organizing Project; San Francisco District Attorney's Office; San Francisco Public Defender; San Gabriel Valley Immigrant Youth Coalition; Santa Ana Building Healthy Communities; Service Employees International Union (SEIU) Local 1000; Showing Up for Racial Justice, Long Beach; Showing Up for Racial Justice, Marin; Showing Up for Racial Justice, Rural-NorCal; Showing Up for Racial Justice, Sacramento; Showing Up for Racial Justice, Santa Barbara; Silicon Valley De-Bug; Social Justice Learning Institute; Stop LAPD Spying Coalition; Street Level Health Project; Think Dignity; Transgender Law Center; UAW 2865, UC Student-Workers Union; Union of the Alameda County Public Defender's Office; UNITE HERE Local 11; Urban Peace Institute; Urban Peace Movement; Village Connect; The W. Haywood Burns Institute; White People for Black Lives/AWARE LA; Women For: Orange County; Women Foundation of California; Young Women's Freedom Center; Youth Alive; 8 private individuals

Opposition: Association of Deputy District Attorneys; Association for Los Angeles Deputy Sheriffs; California Association of Highway Patrolmen (CAHP); California District Attorneys Association; California Narcotic Officers' Association; California State Sheriffs' Association; Los Angeles County Professional Peace Officers Association; Los Angeles Deputy Probation Officers, AFSCME Local 685; Los Angeles Police Protective League; Peace Officers Research Association of California (PORAC); San Bernardino Sheriff-Coroner's Office

PURPOSE

The purpose of this bill is to permit inspection of specified peace and custodial officer records pursuant to the California Public Records Act. Records related to reports, investigations, or findings may be subject to disclosure if they involve the following: (1) incidents involving the discharge of a firearm or electronic control weapons by an officer; (2) incidents involving strikes of impact weapons or projectiles to the head or neck area; (3) incidents of deadly force or serious bodily injury by an officer; (4) incidents of sustained sexual assault by an officer; or (5) incidents relating to sustained findings of dishonesty by a peace officer.

Existing law finds and declares in enacting the California Public Records Act, 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. (Gov. Code § 6250.)

Current law requires that in any case in which discovery or disclosure is sought of peace officer or custodial officer personnel records or records of citizen complaints against peace officers or custodial officers or information from those records, the party seeking the discovery or disclosure shall file a written motion with the appropriate court or administrative body upon written notice to the governmental agency which has custody and control of the records, as specified. Upon receipt of the notice, the governmental agency served must immediately notify the individual whose records are sought.

The motion must include all of the following:

- Identification of the proceeding in which discovery or disclosure is sought, the party seeking discovery or disclosure, the peace officer or custodial officer whose records are sought, the governmental agency which has custody and control of the records, and the time and place at which the motion for discovery or disclosure must be heard.
- A description of the type of records or information sought.
- Affidavits showing good cause for the discovery or disclosure sought, setting forth the materiality thereof to the subject matter involved in the pending litigation and stating upon reasonable belief that the governmental agency identified has the records or information from the records.

No hearing upon a motion for discovery or disclosure shall be held without full compliance with the notice provisions, except upon a showing by the moving party of good cause for noncompliance, or upon a waiver of the hearing by the governmental agency identified as having the records. (Evid. Code § 1043.)

Existing law states that nothing in this article can be construed to 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 perceived, and pertaining to the manner in which he or she performed his or her duties, provided that information is relevant to the subject matter involved in the pending litigation.

In determining relevance, the court examines the information in chambers in conformity with Section 915, and must exclude from disclosure:

- 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.
- In any criminal proceeding, the conclusions of any officer investigating a complaint filed pursuant to Section 832.5 of the Penal Code.

- Facts sought to be disclosed that are so remote as to make disclosure of little or no practical benefit. (Evid. Code § 1045, subs. (a) and (b).)

Existing law states that when determining relevance where the issue in litigation concerns the policies or pattern of conduct of the employing agency, the court must 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. (Evid. Code § 1045, subd. (c).)

Existing law states that 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. (Evid. Code § 1045 subd. (d).)

Existing law states that the court must, 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. (Evid. Code § 1045 subd. (e).)

Existing law requires that in any case, otherwise authorized by law, in which the party seeking disclosure is alleging excessive force by a peace officer or custodial officer, as defined in Section 831.5 of the Penal Code, in connection with the arrest of that party, or for conduct alleged to have occurred within a jail facility, the motion shall include a copy of the police report setting forth the circumstances under which the party was stopped and arrested, or a copy of the crime report setting forth the circumstances under which the conduct is alleged to have occurred within a jail facility. (Evid. Code § 1046.)

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 these agencies, and must make a written description of the procedure available to the public. (Pen. Code § 832.5, subd. (a)(1).)

Existing law provides that complaints and any reports or findings relating to these complaints must 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. (Pen. Code § 832.5, subd. (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). (Pen. Code § 832.5, subd. (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. (Pen. Code § 832.7, subd. (a).)

Existing law states that a department or agency must release to the complaining party a copy of his or her own statements at the time the complaint is filed. (Pen. Code § 832.7, subd. (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, subd. (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. The department or agency shall provide written notification to the complaining party of the disposition of the complaint within 30 days of the disposition. (Pen. Code § 832.7, subds. (d) and (e).)

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, 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. (Pen. Code § 832.8.)

Existing law states that an administrative appeal instituted by a public safety officer under this chapter is to be conducted in conformance with rules and procedures adopted by the local public agency. (Gov. Code §, 3304.5.)

Existing law creates the California Public Records Act, and 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. (Gov. Code §§ 6250 and 6251.)

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. (Gov. Code § 6253, subd. (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. (Gov. Code §, 6255, subd. (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. (Gov. Code §, 6250, et seq.)

This bill provides the public access, through the CPRA, to records related to:

- Reports, investigation, or findings of:
 - Incidents involving the discharge of a firearm at a person by an officer.
 - Incidents involving the discharge of an electronic control weapon at a person by an officer.
 - Incidents involving a strike with an impact weapon or projectile to the head or neck of a person by an officer.
 - Incidents involving use of force by an officer which results in death or serious bodily injury.
- Any record relating to an incident where there was a sustained finding that an officer engaged in sexual assault of a member of the public.
- Any record relating to an incident where there was a sustained finding that an officer was dishonest relating to the reporting, investigation, or prosecution of a crime, or relating to the misconduct of another peace officer, including but not limited to perjury, false statements, filing false reports, destruction/falsifying/or concealing evidence, or any other dishonesty that undermines the integrity of the criminal justice system.

This bill provides that the records released are to be limited to the framing allegations or complaint and any facts or evidence collected or considered. All reports of the investigation or

analysis of the evidence or the conduct, and any findings, recommended findings, discipline, or corrective action taken shall also be disclosed if requested pursuant to the CPRA.

This bill states that records from prior investigations or assessments of separate incidents are not disclosable unless they are independently subject to disclosure under the provisions of this Act. *This bill* provides that when investigations or incidents involve multiple officers, information requiring sustained findings for release must be found against independently about each officer. However, factual information about actions 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.

This bill provides for redaction of records under the following circumstances:

- 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 officers.
- To preserve the anonymity of complainants and witnesses.
- 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 by peace officers and custodial officers.
- 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 officer or another person.

This bill permits a law enforcement agency to withhold a record that is disclosable during an investigation into the use of force by a peace officer until the investigating agency determines whether the use of force violated the law or agency policy. Additionally the agency may withhold a record until the district attorney determines whether to file criminal charges for the use of force. However, in no case may an agency withhold that record for longer than 180-days from the date of the use of force.

COMMENTS

1. Need for This Bill

According to the author:

SB 1421, benefits law enforcement and the communities they serve by helping build trust. Giving the public, journalists, and elected officials access to information about actions by law enforcement will promote better policies and procedures that protect everyone. We want to make sure that good officers and the public have the information they need to address and prevent abuses and to weed out the bad actors. SB 1421 will help identify and prevent unjustified use of force, make officer misconduct an even rarer occurrence, and build trust in law enforcement.

2. Overview of California Law Related to Police Personnel Records

In 1974, in *Pitchess v. Superior Court* (1974) 11 Cal. 3d 531 the California Supreme Court allowed a criminal defendant access to certain kinds of information in citizen complaints against law enforcement officers. After *Pitchess* was decided, several law enforcement agencies launched record-destroying campaigns. As a result, the California legislature required law enforcement agencies to maintain such records for five years. In a natural response, law enforcement agencies began pushing for confidentiality measures, which are currently still in effect.

Prior to 2006, California Penal Code Section 832.7 prevented public access to citizen complaints held by a police officer's "employing agency." In practical terms, citizen complaints against a law enforcement officer that were held by that officer's employing law enforcement agency were confidential; however, certain specific records still remained open to the public, including both (1) administrative appeals to outside bodies, such as a civil service commission, and (2) in jurisdictions with independent civilian review boards, hearings on those complaints, which were considered separate and apart from police department hearings.

Before 2006, as a result of those specific and limited exemptions, law enforcement oversight agencies, including the San Francisco Police Commission, Oakland Citizen Police Review Board, Los Angeles Police Commission, and Los Angeles Sheriff's Office of Independent Review provided communities with some degree of transparency after officer-involved shootings and law enforcement scandals, including the Rampart investigation.

On August 29, 2006, the California Supreme Court re-interpreted California Penal Code Section 832.7 to hold that the record of a police officer's administrative disciplinary appeal from a sustained finding of misconduct was confidential and could not be disclosed to the public. The court held that San Diego Civil Service Commission records on administrative appeals by police officers were confidential because the Civil Service Commission performed a function similar to the police department disciplinary process and therefore functioned as the employing agency. As a result, the decision now (1) prevents the public from learning the extent to which police officers have been disciplined as a result of misconduct, and (2) closes to the public all independent oversight investigations, hearings and reports.

After 2006, California has become one of the most secretive states in the nation in terms of openness when it comes to officer misconduct and uses of force. Moreover, interpretation of our statutes have carved out a unique confidentiality exception for law enforcement that does not exist for public employees, doctors and lawyers, whose records on misconduct and resulting discipline are public records.

3. Effect of This Bill

SB 1421 opens police officer personnel records in very limited cases, allowing local law enforcement agencies and law enforcement oversight agencies to provide greater transparency around only the most serious police complaints. Additionally, SB 1421 endeavors to protect the privacy of personal information of officers and members of the public who have interacted with officers. This independent oversight strikes a balance: in the most minor of disciplinary cases, including technical rule violations, officers will still be eligible to receive private reprimands and retraining, shielded from public view. Additionally, in more serious cases, SB 1421 makes clear the actions of officers who are eventually cleared of misconduct through the more public,

transparent process. SB 1421 also allows law enforcement agencies to withhold information where there is a risk or danger to an officer or someone else, or where disclosure would cause an unwarranted invasion of an officer's privacy.

SB 1421 is consistent with the goals of enhancing police-community relations and furthers procedural justice efforts set out in the President's Task Force on 21st Century Policing, Action Item 1.5.1: "In order to achieve external legitimacy, law enforcement agencies should involve the community in the process of developing and evaluating policies and procedures."¹

Permits Limited Public Access to Peace and Custodial Officer Personnel Records

Peace officer personnel records are currently protected under Penal Code 832.7. This legislation provides limited, through the CPRA, to records related to:

- Records relating to reports, investigation, or findings of:
 - Incidents involving the discharge of a firearm at a person by an officer.
 - Incidents involving the discharge of an electronic control weapon at a person by an officer.
 - Incidents involving a strike with an impact weapon or projectile to the head or neck of a person by an officer.
 - Incidents involving use of force by an officer which results in death or serious bodily injury.
- Any record relating to an incident where there was a sustained finding that an officer engaged in sexual assault of a member of the public.
- Any record relating to an incident where there was a sustained finding that an officer was dishonest relating to the reporting, investigation, or prosecution of a crime, or relating to the misconduct of another peace officer, including but not limited to perjury, false statements, filing false reports, destruction/falsifying/or concealing evidence, or any other dishonesty that undermines the integrity of the criminal justice system.

Restrictions on Disclosure

The records released are to be limited to the framing allegations or complaint and any facts or evidence collected or considered. All reports of the investigation or analysis of the evidence or the conduct, and any findings, recommended findings, discipline, or corrective action taken shall also be disclosed if requested pursuant to the CPRA.

Records from prior investigations or assessments of separate incidents are not disclosable unless they are independently subject to disclosure under the provisions of this Act.

¹ In December 2014, President Barack Obama established the Task Force on 21st Century Policing. The Task Force identified best practices and offered 58 recommendations on how policing practices can promote effective crime reduction while building public trust. The Task Force recommendations are centered on six main objectives: Building Trust and Legitimacy, Policy and Oversight, Technology and Social Media, Community Policing and Crime Reduction, Officer Training and Education, and Officer Safety and Wellness. The Task Force's final report is available at: http://www.cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.

When investigations or incidents involve multiple officers, information requiring sustained findings for release must be found against independently about each officer. However, factual information about actions 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.

The bill provides for redaction of records under the following circumstances:

- 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 officers.
- To preserve the anonymity of complainants and witnesses.
- 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 by peace officers and custodial officers.
- 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 officer or another person.

The bill permits a law enforcement agency to withhold a record that is disclosable during an investigation into the use of force by a peace officer until the investigating agency determines whether the use of force violated the law or agency policy. Additionally the agency may withhold a record until the district attorney determines whether to file criminal charges for the use of force. However, in no case may an agency withhold that record for longer than 180-days from the date of the use of force.

4. Secrecy of Police Personnel Records Under Current California Law

The California Public Records Act, provides generally that "every person has a right to inspect any public record," except as specified in that act. As described above, there is another set of statutes that make peace officer personnel records confidential and establish a procedure for obtaining these records, or information from them. The complex interaction between these interrelated statutory schemes has given rise to a number of decisions interpreting various specific provisions.

In August of 2006, the California Supreme Court held in that the right of access to public records under the California Public Records Act did *not* allow the San Diego Union Tribune 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).) The decision by the court, provided 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. (*Id.*)

In January 2003, the San Diego Union-Tribune newspaper, learned that the Commission had scheduled a closed hearing in case No. 2003-0003, in which a deputy sheriff of San Diego County (sometimes hereafter referred to as County) was appealing from a termination notice. The newspaper requested access to the hearing, but the Commission

denied the request. After the appeal's completion, the newspaper filed several CPRA requests with the Commission asking for disclosure of any documents filed with, submitted to, or created by the Commission concerning the appeal (including its findings or decision) and any tape recordings of the hearing. The Commission withheld most of its records, including the deputy's name, asserting disclosure exemptions under Government Code section 6254, subdivisions (c) and (k). (*Id.* at 1279.)

The newspaper then filed a petition for a writ of mandate and complaint for declaratory and injunctive relief. The trial court denied the publisher's disclosure request under the California Public Records Act. The Fourth District Court of Appeal reversed. The California Supreme Court then reversed and remanded the matter to the Court of Appeal.

In reversing and remanding the matter, the California Supreme Court held that "Section 832.7 is not limited to criminal and civil proceedings." (*Id.* at 1284.)

Petitioner's first argument—that section 832.7, subdivision (a), applies only to criminal and civil proceedings—is premised on the phrase in the statute providing that the specified information is "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." In *Bradshaw v. City of Los Angeles* (1990) 221 Cal. App. 3d 908, 916 [270 Cal. Rptr. 711] (*Bradshaw*), the court opined that the word "confidential" in this phrase "is in its context susceptible to two reasonable interpretations." On the one hand, because the word "is followed by the word 'and,' " it could signify "a separate, independent concept [that] makes the [specified] records privileged material." (*Ibid.*) "On the other hand," the word could also be viewed as merely "descriptive and prefatory to the specific legislative dictate [that immediately] follows," in which case it could mean that the specified records "are confidential only in" the context of a "criminal or civil proceeding." (*Ibid.*) The *Bradshaw* court adopted the latter interpretation, concluding that the statute affords confidentiality only in criminal and civil proceedings, and not in "an administrative hearing" involving disciplinary action against a police officer. (*Id.* at p. 921.)

We reject the petitioner's argument because, like every appellate court to address the issue in a subsequently published opinion, we disagree with *Bradshaw's* conclusion that section 832.7 applies only in criminal and civil proceedings. When faced with a question of statutory interpretation, we look first to the language of the statute. (*People v. Murphy* (2001) 25 Cal.4th 136, 142 [105 Cal. Rptr. 2d 387, 19 P.3d 1129].) In interpreting that language, we strive to give effect and significance to every word and phrase. (*Garcia v. [1285] McCutchen* (1997) 16 Cal.4th 469, 476 [66 Cal. Rptr. 2d 319, 940 P.2d 906].) If, in passing section 832.7, the Legislature had intended "only to define procedures for disclosure in criminal and civil proceedings, it could have done so by stating that the records 'shall not be disclosed in any criminal or civil proceeding except by discovery pursuant to Sections 1043 and 1046 of the Evidence Code ...,' without also designating the information 'confidential.' (Pen. Code, § 832.7, subd. (a).)" (*Richmond*, supra, 32 Cal.App.4th at p. 1439; see also *SDPOA*, supra, 104 Cal.App.4th at p. 284.) Thus, by interpreting the word "confidential" (§ 832.7, subd. (a)) as "establish[ing] a general condition of confidentiality" (*Hemet*, supra, 37 Cal.App.4th at p. 1427), and interpreting the phrase "shall not be disclosed in any criminal or civil proceeding except by discovery pursuant to Sections 1043 and 1046 of the Evidence Code" (Pen. Code, § 832.7, subd. (a)) as "creat[ing] a limited exception to the general principle of confidentiality," we

"give[] meaning to both clauses" of the provision in question. (*Hemet, supra*, 37 Cal.App.4th at p. 1427.)

The Court goes on to state:

...Bradshaw's narrow interpretation of section 832.7 would largely defeat the Legislature's purpose in enacting the provision. "[T]here is little point in protecting information from disclosure in connection with criminal and civil proceedings if the same information can be obtained routinely under CPRA." (*Richmond, supra*, 32 Cal.App.4th at p. 1440.) Thus, "it would be unreasonable to assume the Legislature intended to put strict limits on the discovery of police personnel records in the context of civil and criminal discovery, and then to broadly permit any member of the public to easily obtain those records" through the CPRA. (*SDPOA, supra*, 104 Cal.App.4th at p. 284.) "Section 832.7's protection would be wholly illusory unless [we read] that statute ... to establish confidentiality status for [the specified] records" beyond criminal and civil proceedings. (*SDPOA, supra*, at p. 284.) We cannot conclude the Legislature intended to enable third parties, by invoking the CPRA, so easily to circumvent the privacy protection granted under section 832.7. We therefore reject the petitioner's argument that section 832.7 does not apply beyond criminal and civil proceedings, and we disapprove *Bradshaw v. City of Los Angeles, supra*, 221 Cal. App. 3d 908, to the extent it is inconsistent with this conclusion. (*Id., supra*, at 1284-86 (footnotes omitted).)

The court additionally held that the "Commission records of disciplinary appeals, including the officer's name, are protected under section 832.7." (*Id.* at 1286.)

[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. (*Id.* 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:

Petitioner's appeal to policy considerations is unpersuasive. The petitioner 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 presented with arguments similar to the petitioner'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." (*Id.*, *supra*, 1298-1299, citations omitted, emphasis added.)

5. What Is the Discovery ("Pitchess") Process for Obtaining Police Personnel Records?

The California Supreme Court has described the discovery process, also known as a *Pitchess* motion, for a party obtaining information from a police officer's personnel records. This process is an independent method of obtaining very limited access to officer personnel records through an ongoing litigation discovery process.

In 1978, the California Legislature codified the privileges and procedures surrounding what had come to be known as "*Pitchess* motions" (after our decision in *Pitchess v. Superior Court* (1974) 11 Cal. 3d 531 [113 Cal. Rptr. 897, 522 P.2d 305]) through the enactment of Penal Code sections 832.7 and 832.8 and Evidence Code sections 1043 through 1045. The Penal Code provisions define "personnel records" (Pen. Code, § 832.8) and provide that such records are "confidential" and subject to discovery only pursuant to the procedures set forth in the Evidence Code. (Pen. Code § 832.7.) Evidence Code sections 1043 and 1045 set out the procedures for discovery in detail. As here pertinent, section 1043, subdivision (a) requires a written motion and notice to the governmental agency which has custody of the records sought, and subdivision (b) provides that such motion shall include, *inter alia*, "(2) A description of the type of records or information sought; and [para.] (3) Affidavits showing good cause for the discovery or disclosure sought, setting forth the materiality thereof to the subject matter involved in the pending litigation and stating upon reasonable belief that such governmental agency identified has such records or information from such records." A finding of "good cause" under section 1043, subdivision (b) is only the first hurdle in the discovery process. Once good cause for discovery has been established, section 1045 provides that the court shall then examine the information "in chambers" in conformity with section 915 (i.e., out of the presence of all persons except the person authorized to claim the privilege and such other persons as he or she is willing to have present), and shall exclude from disclosure several enumerated categories of information, including: (1) complaints more than five years old, (2) the "conclusions of any officer investigating a complaint . . ." and (3) facts which are "so remote as to make disclosure of little or no practical benefit." (§ 1045, subd. (b).)

In addition to the exclusion of specific categories of information from disclosure, section 1045 establishes general criteria to guide the court's determination and insure that the privacy interests of the officers subject to the motion are protected. Where the issue in litigation concerns the policies or pattern of conduct of the employing agency, the statute requires the court to "consider whether the information sought may be obtained from other records . . . which would not necessitate the disclosure of individual personnel records." (§ 1045, subd. (c).) The law further provides that the court may, in its discretion, "make *any order which justice requires* to protect the officer or agency from unnecessary annoyance, embarrassment or oppression." (§ 1045, subd. (d), *italics added*.) And, finally, the statute mandates that in any case where disclosure is permitted, the court "shall . . . order that the records disclosed or discovered shall not be used for any purpose other than a court proceeding pursuant to applicable law." (§ 1045, subd. (e), *italics added*.) (*City of Santa Cruz v. Mun. Court*, 49 Cal. 3d 74, 81-83 (1989, footnotes and citations omitted).)

A so-called “Pitchess motion” is most commonly filed when a criminal defendant alleges the officer who arrested him or her used excessive force and the defendant wants to know whether that officer has had complaints filed against him or her previously for the same thing. The Supreme Court described the purpose of this discovery process: “The statutory scheme thus carefully balances two directly conflicting interests: the peace officers just claim to confidentiality, and the criminal defendant’s equally compelling interest in all information pertinent to his defense.” (*City of Santa Cruz v. Mun. Court, supra*, at, 84.)

6. Lack of Privacy Interests Exist for Other Public Employees

The secrecy afforded police records stands in contrast to the records of all other public employees of this state, to which the public has a settled right of access to facts about a complaint, investigation and outcome of misconduct.

The standard of mandating disclosure was first set in *Chronicle Publishing v. Superior Court*, where the Court held that “strong public policy” requires disclosure of both publicly and privately issued sanctions against attorneys. 54 Cal2d 548, 572, 574 (1960). For charges that lead to discipline, the Court held in the 1978 case, *AFSCME v. Regents*, that the disclosure of public employees’ disciplinary records “where the charges are found true, or discipline is imposed” is required because “the strong public policy against disclosure vanishes.” 80 Cal. App. 3d 913, 918. “In such cases a member of the public is entitled to information about the complaint, the discipline, and the “information upon which it was based.” *Id.*

This line of reasoning was affirmed in the 2004 case, *Bakersfield City School Dist. v. Superior Court*, which involved a school official accused of conduct including threats of violence. The Court held that the public’s right to know outweighs an employee’s privacy when the charges are found true or when the records “reveal sufficient indicia of reliability to support a reasonable conclusion that the complaint was well founded.” 118 Cal. App. 4th 1041, 1047. Two years later, in *BRV, Inc. v. Superior Court*, the court went further to require the disclosure of records reflecting an investigation of a high-level official, even as to charges that may be unreliable. The Court found that “the public’s interest in understanding why [the official] was exonerated and how the [agency] treated the accusations outweighs [the official’s] interest in keeping the allegations confidential,” the court concluded. 143 Cal. App. 4th 742, 758-759 (2006).

The reasoning in *BRV* is particularly salient as applied to police shootings: Whether there is reason to infer misconduct or not, the public has a right to know how an agency investigates and resolves questions into serious uses of force.

7. Argument in Support

According to the American Civil Liberties Union:

California is one of the most secretive states in the nation when it comes to officer misconduct and deadly uses of force. Sections 832.7 and 832.8 of the Penal Code make all records relating to police discipline secret, prohibiting public disclosure through the Public Records Act. Courts have interpreted these provisions broadly, blocking access to any records that could be used to assess discipline, including

civilian complaints, incident reports, internal investigations, and any other records related to uses of force or misconduct.²

SB 1421 will pierce the secrecy that shrouds deadly uses of force and serious officer misconduct by providing public access to information about these critical incidents, such as when an officer shoots, kills, or seriously injures a member of the public, is proven to have sexually assaulted a member of the public, or is proven to have planted evidence, committed perjury, or otherwise been dishonest in the reporting, investigation, or prosecution of a crime. Access to records of how departments handle these serious uses, or abuses, of police power is necessary to allow the public to make informed judgments about whether existing processes and infrastructures are adequate. To account for privacy and safety interests, SB 1421 permits withholding these records if there is a risk of danger to an officer or someone else, or if disclosure would represent an unwarranted invasion of an officer's privacy.

Under current law, California deprives the public of basic information on how law enforcement policies are applied, even in critical incidents like officer-involved shootings and when an officer has been found to have committed sexual assault or fabricated evidence. In contrast, many other states recognize that disclosure of records of critical incidents is a basic element of police oversight. Police disciplinary records are generally available to the public in 12 states, including Florida, Ohio, Wisconsin, and Washington, and available to the public under limited circumstances in another 15, including Texas, Massachusetts, Louisiana, and Illinois.³

Even in California, this secrecy is not afforded to any public employees other than law enforcement. For all other public employees, disciplinary records are public, and even allegations of misconduct are generally public, as long as the complaint is not trivial and there is reasonable cause to believe it is well-founded.⁴ For high-profile public officials, the standard of reliability for allegations is even lower, because "the public's interest in understanding why [they were] exonerated ... outweighs [their] interest in keeping the allegations confidential."⁵

In contrast, records relating to even high-profile and controversial killings of civilians by police are kept completely secret by agencies, even though the public's interest in understanding how the agency handled such critical incidents should normally outweigh the officer's privacy interests. Only then can the public properly engage in democratic debate about the way we are policed, the fiscal consequences of police misconduct, and whether the existing processes for preventing and correcting serious abuses by police are adequate.

² *Copley Press, Inc. v. Superior Court*, 39 Cal. 4th 1272, 1286–87 (2006); see also Wesley Lowery, *How many police shootings a year? No one knows*, WASHINGTON POST (Sept. 8, 2014), available at <http://www.washingtonpost.com/news/post-nation/wp/2014/09/08/how-many-police-shootings-a-year-no-one-knows/>.

³ Lewis, R, N Veltman and X Landen, *Is police misconduct a secret in your state?* WNYC News (Oct. 15, 2015), available at <https://www.wnyc.org/story/police-misconduct-records/>.

⁴ See *Bakersfield City Sch. Dist. v. Superior Court*, 118 Cal. App.4th 1041, 1044 (2004).

⁵ *BRV, Inc. v. Superior Court*, 143 Cal. App.4th 742, 758 (Ct. App. 2006), as modified on denial of reh'g (Oct. 26, 2006).

SB 1421 will honor the public's right to know how police departments deal with officer shootings, beatings, and cases of serious and proven sexual assault and corruption. It will provide the public with the tools to determine whether agencies apply standards consistent with community values, and whether they hold officers who violate those standards accountable. It will allow communities to see systems of accountability at work.

California deserves accountable and transparent decision-making by all government officials, particularly those with the state-sanctioned ability to kill civilians. The ACLU is proud to cosponsor SB 1421 and thanks you for your leadership on this critical issue.

8. Argument in Opposition

According to the Los Angeles County Professional Peace Officer Association:

This bill will significantly undermine the protections of current law for peace officer personnel records. Peace officers take a sworn oath to defend and protect the communities they serve, all while facing extraordinary risks of danger daily. Oftentimes, we forget that those individuals who become peace officers are still public employees who are protected under the California Public Records Act, which assures that disciplinary records are not made public in an unfettered fashion.

Current law already provides for a focused and appropriate access to police officer records through the Pitchess motion process. In contrast to the relevant access of the Pitchess process, Senate Bill 1421 calls for the release of information concerning an officer even where his or her activities are entirely lawful, and entirely within the scope of departmental policy. We are aware of no other area of public employment where an employee's information is made public for conduct that conforms entirely within the scope of departmental policy. Far from building community trust, the release of officer records where the officer has been entirely within policy will give the misperception that there was "something wrong" with the officer's conduct. Again, such release of personnel information — where the conduct in question is totally lawful and within policy is unheard of in any other area of public employment.

Moreover, our reading of Senate Bill 1421 is that making the records of an officer's lawful and in policy conduct is retroactive in its impact. In other words, notwithstanding that the officer's conduct was entirely in policy, his or her records are available for public inspection irrespective of whether or not they occurred prior to the effective date of SB 1421.

The Los Angeles County Professional Peace Officer Association believes that Senate bill 1421 singles out police officers for public opprobrium even where they have behaved entirely within law and agency policy and must respectfully oppose the bill.