SUPREME COURT OF CALIFORNIA
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Supreme Court of California
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S253115

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

SAN BERNARDINO COUNTY SHERIFF'S EMPLOYEES' BENEFIT ASSOCIATION,
Petitioner,

v.

COUNTY OF SAN BERNARDINO,
Respondent.

VERIFIED PETITION FOR WRIT OF MANDAMUS OR OTHER EXTRAORDINARY RELIEF

REQUEST FOR IMMEDIATE STAY/INJUNCTIVE RELIEF

Relief Requested Before January 1, 2019 – Operative Date of Legislative Enactment

Michael L. Rains (SBN 91013)
Richard A. Levine (SBN 91671)
*Timothy K. Talbot (SBN 173456)
Zachery A. Lopes (SBN 284394)
RAINS LUCIA STERN
ST. PHALLE & SILVER, PC
2300 Contra Costa Boulevard, Suite 500
Pleasant Hill, CA 94523
Phone (925) 609-1699
Fax (925) 609-1690

Attorneys for Petitioner
SAN BERNARDINO COUNTY SHERIFF'S EMPLOYEES' BENEFIT ASSOCIATION

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Pursuant to California Rule of Court 8.488, Petitioner San Bernardino County Sheriff's Employees' Benefit Association, by and through the undersigned counsel, certifies that there are no interested entities or persons that must be listed in this Certificate under Rule 8.488.

Dated: December 18, 2018

RAINS LUCIA STERN
ST. PHALLE & SILVER, PC

By: *__/s/Timothy Talbot__*
Timothy K. Talbot
Attorneys for Petitioner
SAN BERNARDINO COUNTY
SHERIFF'S EMPLOYEES'
BENEFIT ASSOCIATION

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VERIFIED PETITION FOR WRIT OF MANDAMUS AND REQUEST FOR STAY

Relief Requested Before January 1, 2019

TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF CALIFORNIA:

PRELIMINARY AND JURISDICTIONAL STATEMENT

1. By this original Verified Petition for Writ of Mandamus or Other Extraordinary Relief, Petitioner San Bernardino County Sheriff's Employees' Benefit Association ("Petitioner" or "SEBA") hereby seeks a writ of mandamus directing Respondent County of San Bernardino ("Respondent" or "County") and its agents, employees and representatives to refrain from retroactively enforcing or taking any steps to retroactively enforce California Senate Bill 1421, enacted as Chapter 988 of the 2017-2018 Regular Session ("SB 1421"), effective January 1, 2019, which amends Penal Code sections 832.7 and 832.8 respecting the confidentiality of peace officer personnel records. Petitioner also requests that the Court issue an alternative writ of mandate and an immediate order staying or enjoining any retroactive enforcement of SB 1421 by Respondent and any other public agency employer of peace officers as defined in Penal Code section 830.1 during the pendency of these proceedings.

2. SB 1421 amends Penal Code section 832.7 by eliminating the long-established statutory confidentiality of specified peace officer and

custodial officer personnel records, and information contained in such records. SB 1421 imposes a new statewide mandate that these personnel records and specified information maintained by public agencies shall be subject to disclosure and otherwise available for public inspection pursuant to the California Public Records Act ("CPRA"), Government Code section 6250 et seq. Respondent incorrectly contends that, notwithstanding the absence of any express retroactivity provision, SB 1421 must be applied and enforced as to personnel records and information reflecting specified peace officer conduct occurring prior to January 1, 2019. That information, however, is confidential as a matter of law and not otherwise subject to disclosure, except by discovery pursuant to Sections 1043 and 1046 of the Evidence Code. The intent of the legislature in enacting SB 1421 was not to abridge existing law as to records and information pertaining to incidents and conduct pre-dating January 1, 2019, the effective date of SB 1421.

3. Petitioner respectfully invokes the original jurisdiction of this Court pursuant to California Constitution article VI, section 10; California Code of Civil Procedure section 1085; and California Rule of Court 8.485 et seq. The issue presented by this Petition is of great public importance and must be promptly resolved because, effective January 1, 2019, public entities throughout California will begin receiving CPRA requests for peace officer personnel records and information reflecting specified conduct occurring prior to January 1, 2019. Respondent, and likely numerous other

public entities throughout the state, will produce such records and information despite the absence of any express legislative direction for retroactivity in SB 1421, and in contravention of the well-established presumption against retroactive application of statutes in the absence of a clearly declared intention by the legislature.

4. Pursuant to California Constitution, article I, section 3, subd.(b)(3), any broad construction of statutes pertaining to the right of access to information of public agencies does not supersede the construction of statutes that protect the constitutional right of privacy, including statutes governing discovery or disclosure of information concerning the official performance or professional qualifications of a peace officer. (*Long Beach Police Officers Association v. City of Long Beach* (2014) 59 Cal.4th 59, 68.)

5. Petitioner has no plain, speedy or adequate remedy at law to obtain prompt and final resolution of this controversy so as to prevent irreparable harm and violation of the right of peace officers to confidentiality of their peace officer personnel records and information reflecting conduct occurring prior to January 1, 2019. Moreover, due to the short statutory time limitations for public entities to respond to requests under the CPRA and, if warranted, produce the requested records, there is urgency for the issuance of extraordinary relief to effectuate a prompt resolution of this important issue. Lastly, a dispositive determination by this

Court on the instant statewide issue will prevent a multiplicity of judicial proceedings throughout the State of California, potentially resulting in conflicting determinations.

THE PARTIES

6. SEBA is an employee organization as defined in Government Code section 3500 et seq., recognized by Respondent County as the exclusive representative of Deputy Sheriffs, Sheriff Corporals, Sheriff Detectives, Sheriff Sergeants, Sheriff Lieutenants, District Attorney Investigators, Senior Investigators, Supervising Investigators, other peace officer classifications employed by the County with regard to all matters relating to employment conditions and employer-employee relations. (Gov. Code § 3504). Many of Petitioner's sworn members are peace officers as defined in Penal Code sections 830.1, 830.35, and 830.5.

7. The County is organized and existing under the laws of the State of California. At all times the County was a local employing agency within the meaning of Penal Code section 832.5 et seq. maintaining peace officer personnel information, as well as a local agency within the meaning of the CPRA, Government Code section 6252.

FACTS

8. Penal Code section 832.7, subdivision (a) expressly provides that "peace officer or custodial officer personnel records and records

maintained by any state or local agency pursuant to Section 832.5, or information obtained from those records, are confidential and shall not be disclosed in any criminal or civil proceedings, except by discovery pursuant to Sections 1043 and 1046 of the Evidence Code."

9. Penal Code section 832.8 provides that, as used in Section 832.7, "personnel records" includes "any file maintained under that individual's name by his or her employing agency and containing records relating to any of the following: ... (d) Employee advancement, appraisal, or discipline [] (e) 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."

10. On September 30, 2018, Governor Brown approved SB 1421 which amended Penal Code sections 832.7 and 832.8 relating to peace officer personnel records. SB 1421 provides that peace officer or custodial officer personnel records and information concerning the following categories of incidents shall *not* be confidential, and shall be made available for public inspection pursuant to the CPRA: a) an incident involving the discharge of a firearm at a person by a peace officer or custodial officer; b) an incident in which the use of force by a peace officer or custodial officer against a person resulted in death, or in great bodily injury; c) 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; d) 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 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.

11. Attached hereto as **Exhibit A** is a true and correct copy of Chapter 988 of the 2017-2018 Regular Session, SB 1421, incorporated by reference into this Petition.

12. SB 1421 contains no legislative direction for a retroactive application of the amendments to Penal Code sections 832.7 and 832.8, including no such direction as to the amendment's application to peace officer personnel records reflecting conduct or arising out of incidents occurring prior to January 1, 2019 – information deemed confidential as a matter of law.

13. After SB 1421 was approved by the Governor, Los Angeles Police Department ("LAPD") Chief of Police Michel Moore wrote a letter to SB 1421's principal author, Senator Nancy Skinner, expressing "concern that [SB 1421] may be interpreted as retroactive." The LAPD's concern

was based on its conclusion that compliance with SB 1421, if applied in a retroactive manner, would be "exceptionally burdensome and would require significant reallocation of front-line investigative personnel," such that "the workload on the men and women of the LAPD could prove to be well beyond any reasonable expectation given the sheer volume" of complaints and incidents maintained by that agency. Attached hereto as **Exhibit B** is a true and correct copy of Chief Moore's December 3, 2018 letter, incorporated by reference into this Petition.

14. In a letter dated December 13, 2018, Respondent County informed Petitioner that it intends to apply SB 1421's amendments retroactively, such that "beginning January 1, 2019, the [County] will no longer treat many existing investigative and sustained personnel records as confidential," and such records "shall be made available for public inspection." Attached hereto as **Exhibit C** is a true and correct copy of the County's December 13, 2018 letter, incorporated by reference into this Petition.

CLAIMS ASSERTED

15. SB 1421 amends Penal Code section 832.7, effective January 1, 2019, to eliminate the longstanding statutory confidentiality of specified peace officer or custodial officer personnel records, and the information contained therein, maintained by public agencies in order to make such

records and information available for public inspection pursuant to the CPRA. SB 1421 does not contain any express provision or language requiring retroactivity or any clear indication that the Legislature intended the statute to operate retroactively so as to be applied and enforced with respect to peace officer personnel records and information which arose out of incidents involving peace officer conduct occurring prior to January 1, 2019.

16. The amendments constitute a substantial and adverse change to the existing privacy rights of peace officers. Pursuant to California Constitution, article I, section 3, subdivision (b), paragraph (3), any broad construction of statutes pertaining to the right of access to information of public agencies (such as the CPRA) does *not* supersede the construction of statutes that protect the constitutional right of privacy, including any statutory procedures governing discovery or disclosure of information concerning the official performance or professional qualifications of a peace officer.

17. Petitioner's represented peace officers will suffer irreparable injury and damage by the retroactive application of SB 1421 in that such an application would unlawfully violate the constitutional and statutory protection of peace officers to the confidentiality of their peace officer personnel records regarding incidents or reflecting conduct occurring prior to January 1, 2019.

18. Petitioner has a beneficial interest in Respondent's compliance with its ministerial duty not to violate Petitioner's members' confidentiality rights by applying SB 1421 retroactively.

RELIEF SOUGHT

Wherefore, Petitioner requests the following relief:

1. That this Court forthwith issue an alternative writ of mandate directing Respondent, its agents, employees and representatives to refrain from retroactively enforcing or applying SB 1421's amendments to California Penal Code sections 832.7 and 832.8 in any manner which would result in the disclosure or production of peace officer personnel records and information regarding incidents or reflecting conduct occurring prior to January 1, 2019, or in the alternative, to show cause before this Court at a specified time and place why Respondent has not done so;

2. That upon Respondent's return to the alternative writ, a hearing be held before this Court at the earliest practicable time so that the issue involved in this Petition may be adjudicated promptly;

3. That pending such return and hearing, and until this Court otherwise directs, the Court issue an immediate stay order or grant an injunction prohibiting any retroactive enforcement or application of SB 1421 by any public agency in any manner which would result in the disclosure or production of peace officer personnel records and information

regarding incidents or reflecting conduct described in SB 1421 occurring prior to January 1, 2019;

4. That following the hearing upon this Petition, the Court issue a peremptory writ of mandate or other relief directing Respondent to refrain from retroactively enforcing or applying the amendments to California Penal Code sections 832.7 and 832.8 implemented by SB 1421 in any manner which would result in the disclosure or production of peace officer personnel records regarding incidents or reflecting conduct occurring prior to January 1, 2019;

5. That Petitioner be awarded attorneys' fees and costs of suit; and

6. For such other and further relief as the Court may deem just and proper.

Dated: December 18, 2018

RAINS LUCIA STERN
ST. PHALLE & SILVER, PC

By: *<u>/s/ Timothy K. Talbot</u>*
Timothy K. Talbot
Attorneys for Petitioner
SAN BERNARDINO COUNTY
SHERIFF'S EMPLOYEES'
BENEFIT ASSOCIATION

VERIFICATION

I, Grant Ward, am the duly elected President of the San Bernardino County Sheriff's Employees' Benefit Association ("SEBA"), Petitioner in this action.

I have read the foregoing VERIFIED PETITION FOR WRIT OF MANDAMUS OR OTHER EXTRAORDINARY RELIEF and know the contents thereof. The facts as alleged therein are true to the best of my knowledge, except as to those matters alleged on information and belief, and as to those matters, I believe them to be true. I have authorization to verify such facts on behalf of SEBA.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed December 18, 2018, at San Bernardino, California.

______*/s/ Grant Ward*__________
GRANT WARD

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Existing law affords peace officers a confidentiality privilege to the information contained in their personnel files. This is a privacy right established by statute, affirmed by this Court, and acknowledged by the California Constitution. SB 1421 changes this existing law by designating specified categories of personnel file information as non-confidential and therefore discloseable by public agencies beginning January 1, 2019. SB 1421's changes, however, must operate prospectively only. Peace officers retain their privacy right to personnel file information reflecting incidents or conduct which occurred prior to January 1, 2019.

SB 1421 cannot be applied retroactively to divest peace officers of their privacy right to pre-January 1, 2019 personnel file information because the Legislature did not intend that result. The law is well-settled that a statutory enactment cannot operate retroactively unless it contains an express retroactivity provision or it is "very clear" from other sources that the Legislature "must have intended a retroactive application." (*Evangelatos v. Superior Court* (1988) 44 Cal.3d 1188, 1209.) SB 1421 does not contain an express retroactivity provision, and the relevant extrinsic evidence contains no indication the Legislature intended a retroactive application of the new law.

Respondent County nonetheless has informed Petitioner that it will apply SB 1421 retroactively by "no longer" affording *existing* personnel file information the confidentiality to which such information is entitled. This is an unlawful application of SB 1421's provisions, and this Court should order Respondent to refrain from releasing such information in violation of Petitioner's members' rights.

Additionally, because it is very likely that many public agencies across this state will implement SB 1421's provisions in a similar retroactive manner, and that requests for the public disclosure of pre-January 1, 2019 peace officer personnel file information will be filed immediately on and after SB 1421's effective date, this Court should exercise its original jurisdiction and order all public agencies through the state to refrain from implementing SB 1421 in a retroactive manner. (Cal. Const., art. VI, § 10.)

The lawful application of SB 1421 is an issue of great and statewide public importance, affecting thousands of peace officers employed by public agencies in every county, which requires a prompt and definitive resolution by this Court. Doing so will not only provide guidance and clarity on this important issue for state and local public agencies, it will avoid a multiplicity of judicial proceedings throughout the state, potentially resulting in conflicting determinations.

II. ARGUMENT

A. Mandamus is the Appropriate Remedy.

Mandamus is proper to compel a public agency's performance of acts specifically prescribed by law. (Code Civ. Proc. § 1085.) Issuance of a writ of mandate is dependent upon two basic requirements: 1) a clear, present and ministerial duty on the part of the respondent; and 2) a clear, present and beneficial right in the petitioner to the performance of that duty. (Code Civ. Proc. § 1085; *People ex rel. Younger v. County of El Dorado* (1971) 5 Cal.3d 480, 491.)

A "ministerial duty" is one required to be performed "in a prescribed manner in obedience to the mandate of legal authority and without regard to [] judgment or opinion concerning such act's propriety or impropriety, when a given state of facts exists." (*Transdyn/Cresci v. City and Co. of San Francisco* (1999) 72 Cal.App.4th 746, 752.) Respondent and all other public agencies subject to Penal Code section 832.7 have a ministerial duty to refrain from unlawfully releasing confidential information, properly enforced by mandamus. (Code Civ. Proc. § 1085; *Marken v. Santa Monica-Malibu Unified School Dist.* (2012) 202 Cal.App.4th 1250, 1266-1267 [Mandamus is appropriate to "prevent a public agency from acting in an unlawful manner by releasing information the disclosure of which is prohibited by law"].)

Petitioner is beneficially interested in the enforcement of

Respondent's duty to refrain from releasing Petitioner's members' confidential personnel information and any other information in contravention of Penal Code sections 832.7 and 832.8, in that Petitioner's primary purpose is to enforce and advance its members' rights and working conditions with respect to their employment with the County.

B. This Court Should Exercise Original Jurisdiction to Promptly Resolve An Issue of Great and Statewide Public Importance.

This Court may properly exercise original jurisdiction in mandamus proceedings where "the issues presented are of great public importance and must be resolved promptly." (*Jolicoeur v. Mihaly* (1971) 5 Cal.3d 565, 571, fn. 1; Cal. Const., art. VI, § 10 [Supreme Court has "original jurisdiction in proceedings for extraordinary relief in the nature of mandamus…"].) Exercising original jurisdiction in this case is appropriate because decisively determining the prospective operation of SB 1421's statutory amendments is a matter of great public importance with state-wide impact that must be resolved promptly.

"[T]his court has long exercised [] original extraordinary writ jurisdiction with respect to public officials' exercise of their official conduct." (*Vandermost v. Bowen* (2012) 53 Cal.4th 421, 451.) Exercising such jurisdiction is particularly appropriate where a petition raises important issues of general applicability concerning the operation of state law directing the official conduct of local public agencies. (*Amador Valley*

Joint Union High School Dist. v. State Bd. of Educ. (1978) 22 Cal.3d 208, 218-219 [Challenge to operation of constitutional amendment changing existing system of real property taxation imposing limitations upon the assessment and taxing powers of state and local governments presents issues "of great public importance [that] should be resolved promptly"]; *Curtis v. Bd. of Supervisors* (1972) 7 Cal.3d 942, 950 [Construction of state law setting forth the "procedures used for the formation of cities and other local agencies throughout the state" presented issue of "great public importance [which] must be resolved promptly"]; *San Francisco Unified School Dist. v. Johnson* (1971) 3 Cal.3d 937, 944-945 [Proper construction of state law concerning pupil assignment in local school district "of great public concern and importance," for which a "prompt resolution [was] essential to orderly planning and pupil assignment not only in San Francisco but throughout the state"]; *State Bd. of Equalization v. Watson* (1968) 68 Cal.2d 307, 310-311 [state agency's right of access to county assessor records bearing on the agency's "discharge of statewide supervisory duties"].)

The proper construction of SB 1421's amendments to Penal Code sections 832.7 and 832.8 is a matter of "great public importance" requiring prompt resolution. Every state and local public agency employing peace officers and maintaining their personnel files must lawfully comply with both their disclosure obligations under the CPRA and their peace officer

employees' right to maintain the confidentiality of their personnel records. (Gov. Code § 6253(b) ["Except with respect to public records exempt from disclosure [] *each state or local agency*, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person…" emphasis added]; Cal. Const. art. 1, § 3, subd. (b), par. (7) ["*each local agency* is hereby required to comply with the [CPRA] … and with any subsequent statutory enactment … amending any successor act that contains findings demonstrating that the statutory enactment furthers the purposes of this section" emphasis added]; Exh. A, Sec. 4 [Legislative declaration that amendments to Penal Code section 832.7 furthers the purposes of Cal. Const., art. I, § 3, subd. (b), par. (7)]; Penal Code § 832.7(a) [peace officer personnel 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…", emphasis added].) In the context of this Petition, hundreds of public agencies across all counties of this state must determine whether SB 1421's amendments require a retroactive application. Absent an initial and definitive determination by this Court these public agencies will likely reach different conclusions as to whether SB 1421 is retroactive.

Respondent has already informed Petitioner that it will apply SB 1421 in a retroactive manner, thereby announcing an intent to prospectively

violate the privacy rights of its peace officer employees to the confidentiality of their personnel file information concerning conduct occurring prior to SB 1421's operative date. Such rights have long-been established by state statute and are recognized as an important privacy interest by the California Constitution. (Cal. Const., art. 1, § 3, subd. (b), par. (3); art. I, § 1.)

Exercising this Court's original jurisdiction to adjudicate the Petition does not require a pending CPRA request. Respondent has already expressed its present intent to respond to future CPRA requests in accordance with its stated position. (Pet. ¶ 14, Exh. C ["the Department intends to apply these changes retroactively. Therefore, beginning January 1, 2019, the Department will *no longer* treat many existing investigative and sustained personnel records as confidential" emphasis added].) The proper application of SB 1421's amendments is a legal issue requiring only a review of the statutory language and relevant legislative history. (*Vandermost, supra,* 53 Cal.4th 421 at p. 452, quoting *California Water & Tel. Co. v. Los Angeles* (1967) 253 Cal.App.2d 16, 22 ["A controversy is 'ripe' when it has reached ... the point that the facts have sufficiently congealed to permit an intelligent and useful decision to be made"].) This controversy is ripe for adjudication because all necessary facts are present for the Court to intelligently adjudicate the lawfulness of a retroactive application of the statutory amendments.

Moreover, this Court has previously stated in the specific context of adjudicating legal questions of significant and widespread public import that the "ripeness" doctrine "should not prevent courts from resolving concrete disputes if the consequence of a deferred decision will be lingering uncertainty in the law, especially when there is widespread public interest in the answer to a particular legal question." (*Vandermost, supra,* 53 Cal.4th 421 at p. 452, original emphasis.)

A concrete dispute presently exists between Petitioner and Respondent. Without an immediate determination as to the proper construction of SB 1421's amendments, lingering uncertainty will exist in the law that likely will lead to duplicative legal disputes in separate jurisdictions throughout the state, potentially producing inconsistent judicial determinations. Absent initial extraordinary relief by this Court, it is reasonable to expect that numerous agencies will unlawfully apply the statutory amendments in a retroactive manner, causing irreparable harm that cannot be adequately remedied by a subsequent legal determination.

Peace officers are employed in every county in the State and therefore, each county superior court could be faced with numerous actions seeking adjudication of the retroactivity of SB 1421. Litigating each and every request which seeks peace officer personnel records predating January 1, 2019 will come at a tremendous cost to the involved parties and will tax the courts' limited resources.

Moreover, persons adversely impacted by an agency determination to apply SB 1421 retroactively may not be equipped with the resources necessary to seek immediate injunctive relief. This Court's definitive determination on the proper construction of SB1421's amendments at the outset will avoid these circumstances by providing timely guidance to the involved stakeholders as to how to lawfully interpret and comply with the new law.

This guidance must be issued promptly. SB 1421's amendments are effective on January 1, 2019.[1] On and after that date, it is reasonable to assume numerous public agencies will receive CPRA requests for the specified categories of peace officer personnel records identified by SB 1421's amendments. Indeed, large law enforcement agencies anticipate exactly this scenario, and have deemed it appropriate to allocate resources ahead of time. (Pet. ¶ 13, Exh. B ["[T]he LAPD has been preparing for the massive influx in historical records requests it anticipates starting January 1, 2019"].)

Pending a final judicial determination as to the proper construction of these amendments, this "massive influx" of anticipated requests will be considered in an atmosphere of uncertainty about the lawful application of

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[1] Senate Bill 1421 was enacted during regular legislative session, and not designated as "urgent." Accordingly, its amendments are effective January 1, 2019. (Gov. Code § 9600.)

SB 1421's amendments. (See *Curtis, supra,* 7 Cal.3d at p. 950.) Such circumstances "warrant[] bypassing the normal procedures of trial and appeal by invoking this Court's original jurisdiction." (*Jolicoeur, supra,* 5 Cal.3d at p. 571, fn. 1.)

C. SB 1421 Changes the Existing Privacy Rights of Peace Officers.

Existing law identifies peace officer personnel records, and information obtained from those records, as confidential and exempt from disclosure absent compliance with the statutory *Pitchess* process.[2] (Pen. Code § 832.7(a).) As currently defined, confidential peace officer "personnel records" include "any file maintained under that individual's name by his or her employing agency and containing records relating to" among other things "[e]mployee advancement, appraisal, or discipline," and "[c]omplaints, 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." (Pen. Code § 832.8(d), (e).)

This is a confidentiality privilege, or right, possessed by the individual peace officer (and his or her employer) which forbids public agencies from disclosing such information in response to a CPRA request.

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[2] The "*Pitchess* process" refers to the statutory in-camera disclosure procedure for relevant personnel records during civil and criminal proceedings enacted in response to this Court's decision in *Pitchess v. Superior Court* (1974) 11 Cal.3d 531. (Evid. Code §§ 1043, 1046, 1047.)

(*City of Hemet v. Superior Court* (1995) 37 Cal.App.4th 1411, 1430 ["[T]he protection of Penal Code section 832.7 is illusory unless that statute is incorporated into CPRA…"].)

This Court has recognized that the statutory privilege affords peace officers "a strong privacy interest in [their] personnel records." (*People v. Mooc* (2001) 26 Cal.4th 1216, 1227, 1220 [A peace officer has a "legitimate expectation of privacy in his or her personnel records"]; *Copley Press, Inc. v. Superior Court* (2006) 39 Cal.4th 1272, 1300 ["One of Penal Code section 832.7's purposes is 'to protect the right of privacy of peace officers.' citations omitted"]; *City of Santa Cruz v. Superior Court* (1989) 49 Cal.3d 74, 83-84.) Moreover, maintaining the confidentiality of such information encourages public agencies to retain these records and encourages the cooperation and candor of peace officers during internal investigations. (*Davis v. City of Sacramento* (1994) 24 Cal.App.4th 393, 401, fn. 1; *City of Hemet, supra,* 37 Cal.App.4th at p. 1430.)

This privacy interest is expressly enumerated in the California Constitution. Article I, Section 3 provides generally that legal authority which furthers the people's right of access to public records be "broadly construed," while authority that "limits" the right of access be "narrowly construed." (Cal. Const., art. I, § 3(b), pars. (1), (2).) This mandate, however, *specifically excludes provisions which protect peace officers' privacy interest in the confidentiality of their personnel file information*.

(Cal. Const. art. I, § 3, subd. (b), par. (3) [“Nothing in this subdivision supersedes or modifies the right of privacy guaranteed by Section 1 or affects the construction of any statute, court rule, or other authority to the extent that it protects that right to privacy, including any statutory procedures governing discovery or disclosure of information concerning the official performance or professional qualifications of a peace officer”].) “By its express terms, the constitutional provision excludes from the requirement of narrow construction those statutes that protect the privacy interests of peace officers.” (*Long Beach Police Officers Assn. v. City of Long Beach, supra,* 59 Cal.4th 59, 68.)

Article I, section 3, subdivision (b), paragraph (3) is an explicit constitutional acknowledgment of peace officers’ right to privacy in their personnel file information. (*Commission on Peace Officer Standards & Training v. Superior Court* (2007) 42 Cal.4th 278, 288 [“The Constitution [] recognizes the right to privacy and specifically acknowledges the statutory procedures that protect the privacy of peace officers”].)

SB 1421’s amendments to Penal Code sections 832.7 and 832.8 modify this existing privacy right by identifying four particular categories

of peace officer personnel file “records”[3] as non-confidential and therefore subject to disclosure: (1) records relating to incidents involving the discharge of a firearm at a person; (2) records relating to incidents involving use of force resulting in death or great bodily injury; (3) records relating to sustained findings by a law enforcement agency or “oversight agency” of “sexual assault involving a member of the public”[4], and; (4) records relating to sustained findings by a law enforcement agency or “oversight agency” of specified instances of dishonesty. (Pet. ¶ 11, Exh. A, Sec. 2, Pen. Code § 832.7(b)(1)-(2).)

SB 1421’s amendments also include provisions for mandatory redaction of otherwise discloseable peace officer personnel records for specified content in particular circumstances, and provisions allowing agencies to withhold otherwise discloseable peace officer personnel records relating to uses of force during “active criminal investigations,” criminal prosecutions, and administrative investigations under particular

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[3] “Records” are defined very expansively to include essentially the entirety of an investigation file, including all documents from a subsequent administrative appeal process and anything presented by an employer to a district attorney for criminal investigation. (Pet. ¶ 11, Exh. A, Sec. 2; Pen. Code § 832.7(b)(1)(C)(2).)

[4] “Sexual assault” is specifically defined by SB 1421 to include seemingly non-criminal sexual conduct among consenting adults. (Pet. ¶ 11, Exh. A, Sec. 2; Pen. Code § 832.7(b)(1)(B)(ii) [“Sexual assault” includes “the propositioning for or commission of any sexual act while on duty…”].)

circumstances. (Pet., ¶ 11, Exh. A, Sec. 2; Pen. Code § 832.7(b)(1)(C)(4)-(7).) These particular amendments are not at issue in this Petition.

D. SB 1421's Amendments Operate Prospectively Only and Cannot be Applied or Enforced as to Peace Officer Personnel Records Arising Out of Incidents or Reflecting Conduct Occurring Prior to January 1, 2019.

Applying SB 1421's amendments to conduct which occurred prior to its operative date, January 1, 2019, would constitute a retroactive application of the new law. Because SB 1421's amendments operate prospectively only, however, peace officers maintain their privacy right to that information relating to incidents or reflecting conduct which occurred prior to January 1, 2019, irrespective of when any "records" are generated arising from such incidents or conduct.

"A retrospective law is one which affects rights, obligations, acts, transactions and conditions which are performed or exist prior to the adoption of the statute." (*Aetna Cas. & Sur. Co. v. Industrial Acc. Commission* (1947) 30 Cal.2d 388, 391.) Application of a law to "take[] away or impair[] vested rights acquired under existing laws…in respect to transactions or considerations already past, must be deemed retrospective.'" (*Myers v. Philip Morris Companies, Inc.* (2002) 28 Cal.4th 828, 839.) Applying SB 1421's amendments to remove the confidentiality of conduct occurring prior to its effective date would constitute a retroactive application of its provisions.

Prior to the effective operation of SB 1421's amendments, peace officers were afforded the right to confidentiality in *all* of their personnel file information – a privacy right established by statute, affirmed by this Court, and acknowledged by the Constitution. (Pen. Code § 832.7(a); *Mooc, supra,* 26 Cal.4th at p. 1227 [Peace officers have "a strong privacy interest in [their] personnel records"]; Cal. Const., art. I, § 3, subd. (b), par. (3).)

This is an informational privilege held by the individual peace officer – not merely a privilege allowing a public agency to withhold the production of physical documents. The privacy right extends beyond the actual "files" or "records" maintained by public agencies to encompass the *information* contained in or obtained from those documents – information reflecting conduct which had occurred, and any resultant investigatory or disciplinary actions. (Pen. Code § 832.7(a) ["Peace officer [] personnel records [] *or information obtained from these records*, are confidential…" emphasis added]; Cal. Const., art. I, § 3, subd. (b), par. (3) [Right to privacy acknowledged by the Constitution includes the "statutory procedures governing discovery or disclosure *of information* concerning the official performance or professional qualifications of a peace officer", emphasis added].) *Hackett v. Superior Court* (1993) 13 Cal.App.4th 96, 98-99 ["[T]here is *nothing* in the statutory scheme or its history suggesting a legislative intent to exclude from the privilege[] information which happens

to be obtainable elsewhere." Original emphasis]; *City of San Diego v. Superior Court* (1981) 136 Cal.App.3d 236, 237 ["There would be no purpose to protecting such information in the personnel records if it could be obtained by the simple expedient of asking the officers for their disciplinary history orally"].)

Accordingly, disclosing records reflecting incidents or conduct occurring prior to January 1, 2019 would constitute a retroactive application of SB 1421's amendments because it would violate the right to privacy of that information *already acquired* under existing law. (*Aetna Cas. & Sur. Co., supra,* 30 Cal.2d at p. 391 ["A retrospective law is one which affects rights… [which] exist prior to the adoption of the statute"].)

SB 1421's amendments cannot be applied retroactively, however, because the Legislature did not intend such an operation. "Application of a statute to destroy interests which matured prior to its enactment is generally disfavored." (*Balen v. Peralta Junior Col. Dist.* (1974) 1 Cal.3d 821, 830.) Statutes are presumed to "operate prospectively only," because "the first rule of [statutory] construction [states] that legislation must be considered as addressed to the future, not to the past…." (*Myers, supra,* 28 Cal.4th at p. 840.) "[A] retrospective operation will not be given to a statute which interferes with antecedent rights ... unless such be '*the unequivocal and inflexible import of the terms, and the manifest intention of the legislature*.'" (*Id.*, emphasis added; also see *Evangelatos, supra,* 44 Cal.3d

at p. 1209 ["[I]n the absence of an express retroactivity provision, a statute will not be applied retroactively unless it is very clear from extrinsic sources that the Legislature [] must have intended a retroactive application"].) "Something more than a desirable social objective served by the legislation is [] required if we are to infer a legislative intent of retroactivity." (*Indus. Indem. Co. v. Workers' Comp. Appeals Bd.* (1978) 85 Cal.App.3d 1028, 1032.)

"First, a court should examine the actual language of the statute" to determine if a retroactive intent exists. (*Halbert's Lumber, Inc. v. Lucky Stores, Inc.* (1992) 6 Cal.App.4th 1233, 1238 ["it is the language of the statute itself that has successfully braved the legislative gauntlet"].) SB 1421's terms contain no express statement of retroactive application. (Pet. ¶ 11, Exh. A, Sec. 2.) The enactment contains no legislative findings directing a retroactive application of the new law or asserting that SB 1421 is intended to "clarify" the existing operation of Penal Code section 832.7.[5] (Pet. ¶ 11, Exh. A, Secs. 1, 4.) The language of SB 1421 is not ambiguous on this point. (*Delaney v. Superior Court* (1990) 50 Cal.3d 785, 798 ["If the language is clear and unambiguous there is no need for construction, nor is it necessary to resort to indicia of the intent of the Legislature…"]; *Halbert's Lumber, Inc., supra,* 6 Cal.App.4th at p. 1239 ["If the meaning is

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[5] To the contrary, the legislative history repeatedly affirms that "existing law" deems all peace officer personnel file material is confidential.

without ambiguity, doubt, or uncertainty, then the language controls."])
Had the Legislature intended SB 1421's amendments to apply retroactively to rescind already acquired privacy rights it would have expressly stated as such. (*Aetna Cas. & Sur. Co., supra,* 30 Cal.2d at p. 396 ["[I]t must be assumed that the Legislature was acquainted with the settled rules of statutory interpretation, and that it would have expressly provided for retrospective operation of the amendment if it had so intended"].)

Likewise, the relevant legislative history of SB 1421 contains no expression of retroactive intent. (Declaration of Timothy K. Talbot in Support of Verified Petition ("Talbot Decl."), Exhs. A-I.)[6] While the legislative history contains ambiguous references to SB 1421's "effect" as being to "open[] police officer personnel records in very limited circumstances," such language does not manifestly state an intent to unwind previously-acquired privacy rights for incidents or conduct that has already occurred. (See, *e.g.* Talbot Decl., Exh. A, p. 8; *Myers, supra,* 28 Cal.4th at p. 840.) Rather, this simply states an intent to prospectively open

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[6] The only mention of a potential retroactive application comes from a lobbying organization's *opposition* to the bill. (Talbot Decl., Exh. A, p. 16 ["[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"].) This is irrelevant, however, because it does not provide any insight into the Legislature's collective intent in enacting SB 1421 – lobbyists' letters "do not aid in [the] interpretation of the statute" because they "merely state the individual opinions of their authors." (*Quintano v. Mercury Casualty Co.* (1995) 11 Cal.4th 1049, 1066, fn. 5.)

specified peace officer misconduct for public disclosure occurring after SB 1421's operative date. Interpreting this stated "effect" any other way would ignore the fact that peace officers had an informational privilege, not a document production privilege, for the specified categories of incidents prior to January 1, 2019. (*Arthur Andersen v. Superior Court* (1998) 67 Cal.App.4th 1481, 1500 ["The Legislature is presumed to know existing law when it enacts a new statute…"].) Either way, "the wisest course is to rely on legislative history only when that history itself is unambiguous." (*J.A. Jones Construction Co. v. Superior Court* (1994) 27 Cal.App.4th 1568, 1578.) And, "*a statute that is ambiguous with respect to retroactive application is construed ... to be unambiguously prospective*." (*Myers, supra,* 28 Cal.4th at p. 841, emphasis added.)

The rule is clear: "a statute may be applied retroactively only if it contains express language of retroactivity or if other sources provide a clear and unavoidable implication that the Legislature intended retroactive application. [Citation.]" (*Bullard v. California State Automobile Assn.* (2005) 129 Cal.App.4th 211, 217*,* emphasis added.) SB 1421 contains no "express language of retroactivity" and nothing in the relevant legislative history indicates even an implied retroactive intent. SB 1421's amendments cannot lawfully be applied to rescind previously-acquired privacy rights to the confidentiality of information concerning incidents or conduct

occurring prior to the statute's effective date. Accordingly, Respondent's stated intent to apply SB 1421's amendments retroactively is unlawful.

E. This Court Should Immediately Stay or Otherwise Enjoin Any Retroactive Operation of SB 1421 Until This Petition Has Been Adjudicated.

Without an immediate stay ordering Respondent and all other similarly-situated public agencies to refrain from retroactively applying SB 1421's amendments, Petitioner's members – along with perhaps thousands of other peace officers in this state – will be at substantial risk of their employer publicly releasing confidential information in violation of their right to privacy and the proper prospective application of the new law.

SB 1421's amendments go into effect on January 1, 2019. At least one law enforcement agency anticipates a "massive influx" of CPRA requests immediately on and after that date. (Pet. ¶ 13, Exh. B ["[T]he LAPD has been preparing for the massive influx in historical records requests it anticipates starting January 1, 2019"].) It is not unreasonable to assume that most, if not all, public agencies (including Respondent) will experience a similar avalanche of CPRA requests. Once such requests are received, these agencies are obligated to respond within a very short statutory time-frame, leaving very little time to challenge an agency's

decision to release this information.[7] (Gov. Code § 6253(c) ["Each agency, upon a request for a copy of records, shall, *within 10 days from receipt of the request*, determine whether the request, in whole or in part, seeks copies of disclosable public records…"].)

There is no adequate legal remedy to compensate peace officers for the unlawful disclosure of their confidential personnel file information. The damage caused by unlawful disclosure of confidential information is immediate – the *mere disclosure* of that information to unauthorized individuals constitutes substantial harm. Once such information is in the public domain, there is no practical way to unwind that harm. Indeed, courts have held specifically that the loss of privacy in peace officer personnel file information constitutes irreparable harm, and separately that there is no action for damages available for such a violation. (*Riverside County Sheriffs' Dept. v. Stiglitz* (2012) 209 Cal.App.4th 883, superseded on other grounds, *Riverside County Sheriff's Dept. v. Stiglitz* (2014) 60 Cal.4th 624; *Rosales v. City of Los Angeles* (2000) 82 Cal.App.4th 419, 427-428 ["violation of the statutory procedures for disclosure of police

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[7] Moreover, it is likely that many peace officers will not receive adequate notice providing an opportunity to challenge. Absent a pre-existing collectively-bargained agreement between a public agency employer and an employee organization, Petitioner is not aware of any legal obligation for public agencies to inform the individual peace officers that their personnel file information is subject to a CPRA request before responding to such a request.

personnel records does not give rise to a private right of action for damages"].)

Petitioner should not be required to wait for a CPRA request before seeking a stay or injunctive relief here – it is appropriate for Petitioner to seek immediate injunctive relief against the threatened infringement of its members' rights. (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1292 [threatened enforcement of state statute by school district sufficient for enjoining implementation, citing *Cohen v. Bd. of Supervisors* (1985) 40 Cal.3d 277, injunctive relief filed to enjoin enforcement of city ordinance].) Respondent has stated unequivocally that it will violate Petitioner's members' rights on and after January 1, 2019 by "no longer" affording the specified categories of personnel file information the confidentiality to which it is legally entitled. (Pet. ¶ 14, Exh. C ["beginning January 1, 2019, the [County] will no longer treat many existing investigative and sustained personnel records as confidential…"].)

Any harm suffered by enjoining a retroactive application of SB 1421's amendments is slight. Because the identified categories of personnel file information have been deemed confidential and withheld from public disclosure for over 30 years, waiting until the completion of these proceedings will not cause any undue hardship on either the agencies themselves or the public. In contrast, significant harm will result to

innumerable peace officers from the disclosure of confidential personnel file information reflecting conduct occurring prior to January 1, 2019.

III. CONCLUSION

Petitioner respectfully requests that this Court exercise its original jurisdiction in this matter and issue an immediate order staying the retroactive implementation of SB 1421's amendments or otherwise enjoining Respondent and any other public agency maintaining confidential peace officer personnel files or related information from applying SB 1421's amendments retroactively, and grant the relief sought by the Petition and/or otherwise find that SB 1421's amendments operate prospectively only, such that peace officers maintain their right to the confidentiality of their personnel file information reflecting incidents or conduct occurring before January 1, 2019.

Dated: December 18, 2018

RAINS LUCIA STERN
ST. PHALLE & SILVER, PC

By: *__/s/ Timothy K. Talbot__*
Timothy K. Talbot
Attorneys for Petitioner
SAN BERNARDINO COUNTY
SHERIFF'S EMPLOYEES'
BENEFIT ASSOCIATION

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 8.204(c) of the California Rules of Court, I hereby certify that this brief contains 7,246 words, including footnotes. In making this certification, I have relied on the word count of the computer program used to prepare the brief.

Dated: December 18, 2018

RAINS LUCIA STERN
ST. PHALLE & SILVER, PC

By: *__/s/ Timothy K. Talbot_____*
Timothy K. Talbot
Attorneys for Petitioner
SAN BERNARDINO COUNTY
SHERIFF'S EMPLOYEES'
BENEFIT ASSOCIATION

CERTIFICATE OF SERVICE

SHORT TITLE OF CASE: *San Bernardino County Sheriff's Employees' Benefit Association v. County of San Bernardino*

I, Michelle Soto-Vancil, am a citizen of the United States, and am over 18 years of age. My business address is Rains Lucia Stern St. Phalle & Silver PC, 2300 Contra Costa Boulevard, Suite 500, Pleasant Hill, California 94523. I hereby certify that on December 18, 2018 I caused the following document: **PETITION FOR WRIT OF MANDAMUS OR OTHER EXTRAORDINARY RELIEF; REQUEST FOR IMMEDIATE STAY** to be served on the parties below:

County of San Bernardino
c/o Laura Welch
Clerk of the Board
385 N. Arrowhead Avenue
San Bernardino, CA 92415

By placing a true copy of the above, enclosed in a sealed envelope with delivery charges to be billed to Rains Lucia Stern St. Phalle & Silver, PC, for delivery by Federal Express priority overnight delivery service (Tracking No. 7740 0835 1126) to the address(es) shown above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on December 18, 2018, at Pleasant Hill, California.

/s/ Michelle Soto-Vancil
Michelle Soto-Vancil

EXHIBIT A

LEGISLATIVE COUNSEL BUREAU
STATE OF CALIFORNIA
AUTHENTICATED
ELECTRONIC LEGAL MATERIAL

Senate Bill No. 1421

CHAPTER 988

An act to amend Sections 832.7 and 832.8 of the Penal Code, relating to peace officer records.

[Approved by Governor September 30, 2018. Filed with Secretary of State September 30, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1421, Skinner. 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 made available for public inspection pursuant to the California Public Records Act. The bill would define the scope of disclosable records. 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. Additionally the bill would authorize redaction where, on the facts of the particular case, the public interest served by nondisclosure clearly outweighs the public interest served by disclosure. The bill would allow the delay of disclosure, as specified, for records relating to an open investigation or court proceeding, subject to certain limitations.

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.

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

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

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

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

SEC. 2. 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 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.

(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 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 the use of force by a peace officer or custodial officer against a person resulted in death, or in great bodily injury.

(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 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.

(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.

(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, 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.

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

(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 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.

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

832.8. As used in Section 832.7, the following words or phrases have the following meanings:

(a) "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:

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

(2) Medical history.

(3) Election of employee benefits.

(4) Employee advancement, appraisal, or discipline.

(5) 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.

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

(b) "Sustained" means a final determination by an investigating agency, commission, board, hearing officer, or arbitrator, as applicable, following an investigation and opportunity for an administrative appeal pursuant to Sections 3304 and 3304.5 of the Government Code, that the actions of the peace officer or custodial officer were found to violate law or department policy.

(c) "Unfounded" means that an investigation clearly establishes that the allegation is not true.

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

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

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

O

<u>EXHIBIT B</u>

LOS ANGELES POLICE DEPARTMENT

MICHEL R. MOORE
Chief of Police

ERIC GARCETTI
Mayor

P. O. Box 30158
Los Angeles, CA 90030
Telephone: (213) 486-0150
TDD: (877) 275-5273
Ref #: 1.14

December 3, 2018

The Honorable Nancy Skinner
California State Senate
State Capitol, Room 2059
Sacramento, CA 95814

Dear Senator Skinner:

The Los Angeles Police Department (LAPD) is writing this letter to express our concern that Senate Bill 1421 (SB 1421) may be interpreted as retroactive. Since the passage of SB 1421, the LAPD has been preparing for the massive influx in historical records requests it anticipates starting January 1, 2019. We recognize that the passage of SB 1421 will require our Department to significantly grow its workforce and modernize its technology in order to comply with releasing records that were previously exempt. As such, the Department has convened an SB 1421 Taskforce, meeting weekly with all stakeholders to address future compliance with SB 1421 in an effective and efficient manner. Through this introspective process, we have identified some key ways to streamline current and future investigations that will allow us to more readily comply with the requirements of SB 1421. The mandates of SB 1421, even on a prospective basis, will require the hiring of additional personnel; acquisition of expensive hardware and software related to uploading, redacting, digitizing, and reformatting files and evidence; and, reallocation of personnel from key field, investigative, and administrative positions. If SB 1421 is implemented retroactively, the workload on the men and women of the LAPD could prove to be well beyond any reasonable expectation given the sheer volume of personnel complaints and uses of force (UOF) maintained in antiquated or archaic formats.

The LAPD has two distinct entities that investigate incidents directly related to SB 1421: Force Investigation Group (FIG), which investigates all serious UOF incidents; and, Internal Affairs Group (IAG), which investigates allegations of misconduct. Currently, the LAPD retains complaint records and officer-involved shooting investigations indefinitely.

Use of Force Investigations

In just the last five years, FIG investigated a total of 419 UOF incidents. While not all these incidents would require disclosure under SB 1421, each investigation would have to be reviewed to determine disclosure requirements. A typical investigation requiring disclosure under SB 1421 includes thousands of pages of written investigations and transcripts, hours of audio and video evidence from Body Worn Video and Digital In-Car Video, plus 911 dispatcher audio, and hundreds of photographs. The SB 1421 Taskforce recently audited one representative UOF

investigation requiring disclosure under SB 1421. The items to be disclosed are listed below:

Total Pages of Investigation:	2,232
Total Hours of Video:	11:00:32
Total Hours of Audio:	18:16:04
Total Radio Frequency/911 Call Time:	3:16:30
Total Data Size:	32.14 GB
Total Photos:	813

It is estimated that this case would require 267 work hours to complete a full review for release under SB 1421. Even if the historical record requirement were limited to just the last five years, there is a potential of nearly 300,000 work hours necessary to complete the required tasks under SB 1421. Beyond those five years, the LAPD has approximately 1,013 boxes in storage dating back to 1983. Because these older cases are stored on cassette tapes, reel to reel tape, and floppy discs, reviewing, reproducing, and redacting these records will prove extremely burdensome. The LAPD currently has no technology to convert many of these investigations to a workable, disclosable format. From the older cases, paperwork and developed photographs will need conversion to a digital format, review by a trained investigator, and redaction as required by law. Currently, the older cases are not divided into the categories required under SB 1421; as such, Department personnel will be required to complete a hand review of every case. This historical research would all have to be completed in conjunction with new cases being investigated and reviewed for release under SB 1421.

Complaint Investigations

Internal Affairs Group averages over 3,300 disciplinary investigations each year. The breakdown over the previous five years is as follows:

Year	Initiated	Sustained Complaints*	Sustained Allegations
2017	3,189	372	629
2016	3,393	404	664
2015	3,446	450	1,038
2014	3,773	363	725
2013	3,543	365	664
Total 5 Years	17,344	1,954	3,720

If SB 1421 is to be implemented retroactively, these cases will require review in much the same manner as the UOF cases. While most cases after 2003 have been scanned, many are not in a searchable format; therefore, each would still require conversion to a word search format, or an entire manual review. Each sustained complaint must be individually reviewed, redacted, and uploaded into a releasable format.

* There could be several sustained allegations in a single complaint.

The review and redaction process would include a search of the following records:

- Audio and video recordings;
- Penalty Recommendation forms;
- Relief from Duty forms;
- Suspension or Demotion forms;
- Board of Rights or other hearing documents; and,
- Legal/Court of Appeals documents.

Simply stated, the physical and rudimentary manner in which the LAPD catalogs its completed investigations will require a manual review of each case for investigations completed after 2003. Those dated prior to that time were placed in individual employee personnel packages and would require the requester to identify the involved officer in order for the Department to have to a realistic ability to determine whether the investigation existed and is subject to disclosure.

The LAPD operates with a guiding principle of Reverence for the Law; as such, we will diligently comply with SB 1421. We maintain, however, that a retroactive implementation of SB 1421 will be exceptionally burdensome and would require significant reallocation of front-line investigative personnel.

Should you have any questions concerning this matter, please contact Commander Jeff Bert, Risk Management Legal Affairs Group, at (213) 486-8720.

Respectfully,

MICHEL R. MOORE
Chief of Police

EXHIBIT C

MICHELLE D. BLAKEMORE
County Counsel

PENNY ALEXANDER-KELLEY
Chief Assistant County Counsel

MILES A. KOWALSKI
Deputy County Counsel

COUNTY COUNSEL
385 NORTH ARROWHEAD AVENUE, 4th FLOOR
SAN BERNARDINO, CA 92415-0140

(909) 387-5455 Fax (909) 387-5462

December 13, 2018

SEBA
735 E Carnegie Drive #125
San Bernardino, CA 92408

Re: Senate Bill 1421 Peace officers: release of records

To Whom It May Concern:

In anticipation of SB 1421 taking effect, the Sheriff's Department has been diligently reviewing the changes to the law and carefully considering how to implement these changes. Based on this review, and on the advice of counsel, the Department intends to apply these changes retroactively. Therefore, beginning January 1, 2019, the Department will no longer treat many existing investigative and sustained personnel records as confidential. Specifically, the following records, whether created in the past or future, shall no longer be confidential and shall be made available for public inspection: records related to the report, investigation, or findings of an incident involving the discharge of a firearm at a person by a peace officer or custodial officer, or an incident in which a use of force by a peace officer or custodial officer resulted in death, or great bodily injury; and any record relating to an incident in which a sustained finding was made that a peace officer or custodial officer engaged in sexual assault involving a member of the public, or of 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.

Sincerely,

MICHELLE D. BLAKEMORE
County Counsel

MILES A. KOWALSKI
Deputy County Counsel

SUPREME COURT OF CALIFORNIA
Electronically RECEIVED on 12/18/2018 at 3:07:55 PM

S253115

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

SAN BERNARDINO COUNTY SHERIFF'S EMPLOYEES' BENEFIT ASSOCIATION,
Petitioner,

v.

COUNTY OF SAN BERNARDINO,
Respondent.

DECLARATION OF TIMOTHY K. TALBOT IN SUPPORT OF VERIFIED PETITION FOR WRIT OF MANDAMUS OR OTHER EXTRAORDINARY RELIEF

REQUEST FOR IMMEDIATE STAY/INJUNCTIVE RELIEF

Relief Requested Before January 1, 2019 – Operative Date of Legislative Enactment

Michael L. Rains (SBN 91013)
Richard A. Levine (SBN 91671)
*Timothy K. Talbot (SBN 173456)
Zachery A. Lopes (SBN 284394)
RAINS LUCIA STERN
ST. PHALLE & SILVER, PC
2300 Contra Costa Boulevard, Suite 500
Pleasant Hill, CA 94523
Phone (925) 609-1699
Fax (925) 609-1690

Attorneys for Petitioner
SAN BERNARDINO COUNTY SHERIFF'S EMPLOYEES' BENEFIT ASSOCIATION

DECLARATION OF TIMOTHY K. TALBOT IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS OR OTHER EXTRAORDINARY RELIEF

I, Timothy K. Talbot, do hereby declare that the facts set forth below are personally known to me, and if called as a witness herein, I could and would testify competently thereto as follows:

1. I am a resident of the State of California.

2. I am an attorney licensed to practice law in the State of California and before this court. I am a partner at the law firm of Rains Lucia Stern St. Phalle & Silver, PC, attorneys for San Bernardino County Sheriff's Employees' Benefit Association ("SEBA").

3. On or about December 14, 2018, I accessed the official California Legislative Information website at address https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201720180SB1421, and downloaded a copy of the following documents:

(a) "Senate Committee on Public Safety" analysis of Senate Bill 1421 ("SB 1421") for hearing on April 17, 2018. A true and correct copy is attached hereto as **Exhibit A**.

(b) "Senate Committee on Appropriations" analysis of SB 1421 for hearing on May 22, 2018. A true and correct copy is attached hereto as **Exhibit B**.

(c) "Senate Committee on Appropriations" analysis of SB 1421 for hearing on May 25, 2018. A true and correct copy is attached hereto as **Exhibit C**.

(d) "Senate Rules Committee, Office of the Senate Floor Analyses" analysis of SB 1421 as amended May 25, 2018. A true and correct copy is attached hereto as **Exhibit D**.

(e) "Assembly Committee on Public Safety" analysis of SB 1421 for hearing on June 26, 2018. A true and correct copy is attached hereto as **Exhibit E**.

(f) "Assembly Committee on Appropriations" analysis of SB 1421 for hearing on August 8, 2018. A true and correct copy is attached hereto as **Exhibit F**.

(g) "Senate Third Reading" of SB 1421 as amended August 20, 2018. A true and correct copy is attached hereto as **Exhibit G**.

(h) "Senate Third Reading" of SB 1421 as amended August 23, 2018. A true and correct copy is attached hereto as **Exhibit H**.

(i) "Senate Rules Committee, Office of the Senate Floor Analyses" analysis of SB 1421 as amended August 23, 2018. A true and correct copy is attached hereto as **Exhibit I**.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge and was executed on this 18th day of December 2018 at Sacramento, California.

/s/ Timothy K. Talbot
Timothy K. Talbot

CERTIFICATE OF SERVICE

SHORT TITLE OF CASE: *San Bernardino County Sheriff's Employees' Benefit Association v. County of San Bernardino*

I, Michelle Soto-Vancil, am a citizen of the United States, and am over 18 years of age. My business address is Rains Lucia Stern St. Phalle & Silver PC, 2300 Contra Costa Boulevard, Suite 500, Pleasant Hill, California 94523. I hereby certify that on December 18, 2018 I caused the following document: **DECLARATION OF TIMOTHY K. TALBOT IN SUPPORT OF VERIFIED PETITION FOR WRIT OF MANDAMUS OR OTHER EXTRAORDINARY RELIEF; REQUEST FOR IMMEDIATE STAY/INJUNCTIVE RELIEF** to be served on the parties below:

County of San Bernardino
c/o Laura Welch
Clerk of the Board
385 N. Arrowhead Avenue
San Bernardino, CA 92415

By placing a true copy of the above, enclosed in a sealed envelope with delivery charges to be billed to Rains Lucia Stern St. Phalle & Silver, PC, for delivery by Federal Express priority overnight delivery service (Tracking No. 7740 0835 1126) to the address(es) shown above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on December 18, 2018, at Pleasant Hill, California.

/s/ Michelle Soto-Vancil
Michelle Soto-Vancil

EXHIBIT A

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

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, subds. (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.

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[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, supr*a, 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.) (C*ity 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 Cal.2d 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 judgements 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.

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[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, out 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.

-- END –

EXHIBIT B

SENATE COMMITTEE ON APPROPRIATIONS
Senator Ricardo Lara, Chair
2017 - 2018 Regular Session

SB 1421 (Skinner) - Peace officers: release of records

Version: April 2, 2018
Urgency: No
Hearing Date: May 22, 2018

Policy Vote: PUB. S. 5 - 2
Mandate: Yes
Consultant: Shaun Naidu

This bill meets the criteria for referral to the Suspense File.

Bill Summary: SB 1421 would subject specified personnel records of peace officers and correctional officers to disclosure pursuant to the California Public Records Act (PRA).

Fiscal Impact:

- State agencies: Costs to individual state departments that employ officers vary, ranging from minor and absorbable to a potentially-significant increase in ongoing workload necessitating the hiring of additional personnel to respond to a greater number of PRA requests and review and redact the records accordingly. (General Fund, special funds*)

- Local agencies: Potentially-major ongoing non-reimbursable local costs, potentially in the millions of dollars statewide given the large number of local agencies employing officers (482 cities and fifty-eight counties) that would be responding to a greater number of PRA requests for personnel and other records related to specified sustained findings against officers and reports, investigations, and findings related to specified incidents. (Local funds)

* Motor Vehicle Account and various special funds

Background: The California Public Records Act requires state or local public entities, with specified exceptions, to make records available for inspection by the public. In 2014, the voters passed Proposition 42, which required local governments to comply with laws providing for public access to local government body meetings and records of government officials. Moreover, it eliminated reimbursement by the state for local compliance costs. While the passage of the proposition led to a cost savings of tens of millions of dollars annually in avoided reimbursements, those costs now are borne entirely by the local governments.

Notwithstanding the PRA, statute provides that any peace officer or custodial officer personnel record, as defined, and any record maintained by a state or local agency related to complaints against peace officers and custodial officers, or any information obtained from these records, must be kept confidential. Except by discovery, these records are prohibited from being disclosed in any criminal or civil proceeding. Additionally, these records may be disclosed 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.

In 2006, the California Supreme Court, interpreting the peace officer confidentiality law mentioned above, held that records of a peace officer's administrative disciplinary appeal from a sustained finding of misconduct was confidential and could not be disclosed to the public. (*Copley Press, Inc.* v. *Superior Court* (2006) 39 Cal 4th 1272.) Subsequent to the *Copley* decision, all peace officer or correctional officer personnel records have been excluded from public disclosure, save the limited circumstances mentioned above.

Proposed Law: This bill would require public entities to make certain personnel records of peace officers and correctional officers available for public inspection. Specifically, this bill would make a record related to the report, investigation, or findings of any of the following purposes subject to disclosure under the PRA:

- An incident involving the discharge of a firearm at a person by a peace officer or custodial officer.
- 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.
- 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.
- 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 that term is defined.

Additionally, SB 1421 would make disclosable under the PRA any record related to an incident in which a sustained finding was made by a law enforcement agency or oversight agency that a peace officer or custodial officer engaged in:

- Sexual assault involving a member of the public; or
- Dishonesty relating to the reporting, investigation, or prosecution of a crime, or 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, or any other dishonesty that undermines the integrity of the criminal justice system.

Of the records that would be subject to public disclosure under this measure, the disclosing agency must redact information 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 officers or where there is a specific, particularized reason to believe that disclosure would pose a significant danger to the physical safety of the officer or others.

Additionally, this bill would make legislative findings and declarations related to the peace officers' authority and the public's faith in the legitimacy of law enforcement.

Related Legislation: SB 1286 (Leno, 2016) would have provided public access to peace officer and custodial officer personnel records and other records maintained by a state or local agency related to complaints against those officers. Additionally, SB 1286

would have required additional information to be provided in a written notification to a complaining party of the disposition of a complaint against a peace officer or custodial officer, as specified. SB 1286 was held on the Suspense File of this Committee.

AB 1648 (Leno, 2007) would have amended existing law related to the disclosure of information contained in personnel records maintained by specified state and local agencies; declared the intent of the Legislature to overturn the *Copley Press* decision and restore public access to peace officer records, meetings, and hearings that were open to the public prior to the *Copley* decision. AB 1648 failed passage in the Assembly Committee on Public Safety.

SB 1019 (Romero, 2007) would have abrogated the holding in *Copley* and would have made specified limited information available to the public upon a determination that an officer is disciplined. SB 1019 failed passage in the Assembly Committee on Public Safety.

Staff Comments: The fiscal impact of this bill to state departments cannot be determined with certainty, as actual costs would depend on the number of peace officers employed by any given department, the frequency and types of interactions those officers have with members of the public, the entities' current capability to handle an increase in PRA requests, and the actual number of requests made.

As indicated above, some agencies anticipate minor and absorbable costs to comply with the requirements of SB 1421. For example, the Department of Fish and Wildlife estimates twenty hours of increased workload, resulting in an approximate cost of $1,300. Similarly, the Department of Insurance predicts that this bill would increase the records review process time by its legal staff in determining what records are exempt from disclosure and which are not. The Department of Insurance consequently would incur one-time cost of $16,000, which includes training, and ongoing costs of $9,000 annually.

The California Highway Patrol anticipates additional workload costs of $19,000 annually resulting from the disclosure requirements in SB 1421, comprised of the additional time it would take analysts to determine which records are eligible for disclosure and redact specified portions and for supervisory uniformed personnel to review analysts' determinations.

Other state departments would need to retain additional staff to meet the likely higher demand of peace officer and correctional officer personnel records, in part due to the number of officers that they employ. The Department of State Hospitals estimates it would need to hire 0.5 Associate Governmental Program Analyst (AGPA) along with attendant operating expenses and equipment annually. The Department of Corrections and Rehabilitation estimates that it would need to hire at least 1.0 AGPA and 1.0 Attorney to process and review the likely increase in PRA request of officer records. Staff is uncertain of the bill's fiscal impact to the University of California and California State University systems.

SB 1421 would allow an agency to withhold officer personnel records regarding a use-of-force incident that still is under investigation for up to 180 days after the incident to allow the employing agency to complete the investigation. The Public Safety Officers

Procedural Bill of Rights Act generally allows employing agencies one year to conduct an investigation of officers' alleged misconduct. Practically, the shorter time period before which disclosure would be required under SB 1421 would require employing agencies to either complete investigations in half the time currently allowed, potentially incurring additional costs, or release records before the completion of an investigation. The author may wish to address this disparity.

-- END --

EXHIBIT C

SENATE COMMITTEE ON APPROPRIATIONS
Senator Ricardo Lara, Chair
2017 - 2018 Regular Session

SB 1421 (Skinner) - Peace officers: release of records

Version: April 2, 2018
Urgency: No
Hearing Date: May 25, 2018

Policy Vote: PUB. S. 5 - 2
Mandate: Yes
Consultant: Shaun Naidu

*********** ANALYSIS ADDENDUM – SUSPENSE FILE ***********
The following information is revised to reflect amendments adopted by the committee on May 25, 2018

Bill Summary: SB 1421 would subject specified personnel records of peace officers and correctional officers to disclosure pursuant to the California Public Records Act (PRA).

Fiscal Impact:

- State agencies: Costs to individual state departments that employ officers vary, ranging from minor and absorbable to a potentially-significant increase in ongoing workload necessitating the hiring of additional personnel to respond to a greater number of PRA requests and review and redact the records accordingly. (General Fund, special funds*)

- Local agencies: Potentially-major ongoing non-reimbursable local costs, potentially in the millions of dollars statewide given the large number of local agencies employing officers (482 cities and fifty-eight counties) that would be responding to a greater number of PRA requests for personnel and other records related to specified sustained findings against officers and reports, investigations, and findings related to specified incidents. (Local funds)

* Motor Vehicle Account and various special funds

Author Amendments: Allow a delay in the release of records for specified purposes.

Committee Amendments: Allow a delay in the release of records for the purpose of an administrative investigation and make technical, non-substantive changes.

-- END --

<u>EXHIBIT D</u>

SENATE RULES COMMITTEE SB 1421

Office of Senate Floor Analyses
(916) 651-1520 Fax: (916) 327-4478

THIRD READING

Bill No: SB 1421
Author: Skinner (D), et al.
Amended: 5/25/18
Vote: 21

SENATE PUBLIC SAFETY COMMITTEE: 5-2, 4/17/18
AYES: Skinner, Bradford, Jackson, Mitchell, Wiener
NOES: Anderson, Stone

SENATE APPROPRIATIONS COMMITTEE: 5-2, 5/25/18
AYES: Lara, Beall, Bradford, Hill, Wiener
NOES: Bates, Nielsen

SUBJECT: Peace officers: release of records

SOURCE: Author

DIGEST: This bill permits inspection of specified peace and custodial officer records pursuant to the California Public Records Act (CPRA). Provides that 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.

ANALYSIS:

Existing law:

1) Finds and declares in enacting the CPRA, 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.)

2) 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.

3) Requires the motion to include all of the following:

   a) 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.

   b) A description of the type of records or information sought.

   c) 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.

   d) 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.)

4) 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.

5) Provides that in determining relevance, the court examine the information in chambers in conformity with Section 915, and must exclude from disclosure:

   a) 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.

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

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

6) 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).)

7) 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).)

8) 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).)

9) 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.)

10) 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).)

11) 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).)

12) 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 CPRA 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).)

13) 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).)

14) 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).)

This bill:

1) Provides the public access, through the CPRA, to records related to:
   a) Reports, investigation, or findings of:
      i) Incidents involving the discharge of a firearm at a person by an officer.
      ii) Incidents involving the discharge of an electronic control weapon at a person by an officer.

iii) Incidents involving a strike with an impact weapon or projectile to the head or neck of a person by an officer.

iv) Incidents involving use of force by an officer which results in death or serious bodily injury.

b) 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.

c) 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.

2) 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.

3) 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.

4) 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.

5) Provides for redaction of records under the following circumstances:

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 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 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 officer or another person.

6) 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. Specifies a process for continued withholding of records if there is an active and ongoing investigation.

7) Clarifies that the bill does not impact civil and criminal discovery processes.

Background

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. 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. 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.

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."

Recent Amendments Address Opposition Concerns with Timing of Records Release

Recent amendments to the bill were negotiated with prosecutors and law enforcement to permit a delay in the release of records under the bill when there is an ongoing administrative or criminal investigation. The intent of the amendments is to allow for law enforcement or prosecutorial agencies to release information as it becomes available and when it will not prejudice an ongoing investigation.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Senate Appropriations Committee:

1) *State agencies:* Costs to individual state departments that employ officers vary, ranging from minor and absorbable to a potentially-significant increase in ongoing workload necessitating the hiring of additional personnel to respond to a greater number of CPRA requests and review and redact the records accordingly. (General Fund, special funds*)

2) *Local agencies:* Potentially-major ongoing non-reimbursable local costs, potentially in the millions of dollars statewide given the large number of local agencies employing officers (482 cities and 58 counties) that would be responding to a greater number of CPRA requests for personnel and other records related to specified sustained findings against officers and reports, investigations, and findings related to specified incidents. (Local funds)

* Motor Vehicle Account and various special funds

SUPPORT: (Verified 5/25/18)

A New Path
A New Way of Life Re-entry Project
Advancement Project
AF3IRM Los Angeles
AFSCME Local 329
Alliance for Boys and Men of Color
Alliance San Diego
American Civil Liberties Union of California
American Federation of Teachers, AFL-CIO
American Friends Service Committee
Anaheim Community Coalition
Anti Police – Terror Project
Anti-Recidivism Coalition
Arab American Civic Council
Asian Americans Advancing Justice
Asian Law Alliance
Bend the Arc
Black American Political Association of California
Black and Pink, Inc.
Black Lives Matter – California
Cage-Free Repair
California Alliance for Youth and Community Justice
California Broadcasters Association

California Church IMPACT
California Courage Campaign
California Faculty Association
California Federation of Teachers
California Immigrant Policy Center
California Immigrant Youth Justice Alliance
California Latinas for Reproductive Justice
California News Publishers Association
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
City of Berkeley
Climate Action Campaign
Coalition for Justice and Accountability
Committee for Racial Justice
Communities United for Restorative Youth Justice
Community Coalition
Conference of California Bar Associations
Council on American-Islamic Relations
Critical Resistance
CTT
Davis People Power
Dignity and Power No
Drain the NRA
Earl B. Gilliam Bar Association
East Bay Community Law Center
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 Resource Center
Indivisible CA: StateStrong
InnerCity Struggle
Interfaith Movement for Human Integrity
Interfaith Worker Justice San Diego
IUCC Advocates for Peace and Justice
Jack and Jill America of America, Incorporated, San Diego Chapter
Jewish Action
Journey House
Koreatown Immigrant Workers Alliance
LA Voice
LAANE
Law Enforcement Accountability Network
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
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
Oak View ComUNIDAD
Oakland Privacy
Orange County Communities Organized for Responsible Development
Orange County Equality Coalition
Pacific Media Workers Guild
PACT: People Acting in Community Together
Partnership for the Advancement of New Americans
PICO California
PolicyLink
Press4WordPrevention Institute
Public Health Justice Collective
R Street Institute
Reporters Committee for Freedom of the Press
Resilience Orange County

Richard Barrera, Trustee, Board of Education
Riverside Coalition for Police Accountability
Riverside Temple Beth El
Root and Rebound
San Diego LGBT Community Center
San Diego Organizing Project
San Diego Unified School District
San Francisco District Attorney's Office
San Francisco Public Defender
San Gabriel Valley Immigrant Youth Coalition
Santa Ana Building Healthy Communities
Santa Ana Unidos
Service Employees International Union Local 1000
Showing Up for Racial Justice, Bay Area
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
The Black Jewish Justice Alliance
The Education Trust-West
The W. Haywood Burns Institute
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
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
8 individuals

OPPOSITION: (Verified 5/25/18)

Association of Deputy District Attorneys
Association for Los Angeles Deputy Sheriffs
California Association of Highway Patrolmen
California Narcotic Officers' Association
California Peace 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
San Bernardino Sheriff-Coroner's Office

Prepared by: Gabe Caswell / PUB. S. /
5/29/18 11:40:44

****** END ******

EXHIBIT E

Date of Hearing: June 26, 2018
Counsel: Sandy Uribe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

SB 1421 (Skinner) – As Amended June 19, 2018

SUMMARY: Subjects specified personnel records of peace officers and correctional officers to disclosure under the California Public Records Act (PRA). Specifically, **this bill**:

1) Provides that, notwithstanding any other law, the following the following peace-officer or custodial-officer personnel records are not confidential and shall be made available for public inspection pursuant to the PRA:

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

      i) An incident involving an officer's discharge of a firearm at a person;

      ii) An incident involving an officer's discharge of an electronic-control weapon or conducted-energy device at or upon a person;

      iii) An incident involving an officer striking a person's head or neck with an impact weapon or projectile; or

      iv) An incident in which an officer's use of force against a person resulted in death, or in serious bodily injury.

   b) Any record relating to an incident in which a sustained finding was made by a law-enforcement or oversight agency that an officer engaged in sexual assault involving a member of the public, as defined; and,

   c) Any record relating to an incident in which a sustained finding was made by a law-enforcement or oversight agency of dishonesty by an officer relating to the reporting, investigation, or prosecution of a crime, or relating to the reporting of, or investigation of misconduct by, another officer, including but not limited to, any sustained finding of perjury, false statements, filing false reports, destruction, falsifying, or concealing of evidence.

2) States that the records requiring release include, but are not limited to, the framing allegations or complaint, any facts or evidence collected or considered, any reports of the investigation or analysis of the evidence or the conduct, and any findings or recommended findings, as well as any disciplinary or corrective action taken.

3) Prohibits the release of a record from a separate and prior investigation of a separate incident unless it is independently subject to disclosure.

4) Provides that if an investigation or incident involves multiple officers, information requiring sustained findings for release must be found independently against each officer. However, factual information about an officer's actions during an incident, or an officer's statements about an incident, shall be released if they are relevant to a sustained finding against another officer that is subject to release.

5) Requires redaction of records as follows:

   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 officers and custodial officers;

   b) To preserve the anonymity of complainants and witnesses;

   c) 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 officers; and,

   d) Where there is a specific, particularized reason to believe that disclosure would pose a significant danger to the physical safety of the officer or others.

6) Allows delayed disclosure for records relating to an investigation or court proceeding involving a use-of-force incident, as follows:

   a) 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 prosecutor decides whether to file criminal charges, whichever occurs first. After 60 days from the use-of-force incident, disclosure may still be delayed if it could reasonably be expected to interfere with the investigation. However, at 180 day intervals as necessary, the agency must justify the continued delayed disclosure, as specified. Information withheld must be disclosed no later than 18 months after the date of the incident if the investigation involves the officer who used forced. If the information involves someone other than the officer, then disclosure must occur no later than 18 months after the incident, unless there are extraordinary circumstances warranting continued delay;

   b) If criminal charges are filed in relation to the use-of-force incident, the agency may delay disclosure until a verdict is reached at trial, or in the case involving an entry of plea, until the time to withdraw the plea; and,

   c) During an administrative investigation into a use-of-force incident, the agency may delay disclosure until the 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 the criminal investigation related to the officer's use of force, whichever is later.

7) Prohibits release of records if an administrative investigation results in a determination by the employing agency that the complaint is unfounded because the alleged use of force did not

occur.

8) Specifies that these provisions do not affect or supersede the criminal discovery process, or the admissibility of peace officer personnel records.

9) Defines the following terms for purposes of the meaning of personnel records:

   a) "Sustained" means "a final determination by an investigating agency, commission, board, hearing officer, or arbitrator, as applicable, following an investigation and opportunity for an administrative appeal … , that the actions of the peace officer or custodial officer were found to violate law or department policy;" and

   b) "Unfounded" means "that an investigation clearly establishes that the allegation is not true."

10) Contains legislative findings and declarations about the authority of peace officers and the public's faith in the legitimacy of law enforcement.

EXISTING LAW:

1) Provides pursuant to the California Public Records Act (PRA) that all records maintained by local and state governmental agencies are open to public inspection unless specifically exempt. (Gov. Code, §§ 6250 *et seq*.)

2) Defines "public records" to include any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. (Gov. Code, § 6252, subd. (e).)

3) States that, except as in other sections of the PRA, this chapter does not require the disclosure of specified records, which includes among other things: records of complaints to, or investigations conducted by specified agencies, including any state or local police agency, or any investigatory or security files compiled by any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes. (Gov. Code, § 6254, subd. (f).)

4) Provides, notwithstanding any other law, state and local law enforcement agencies shall make public the following information, except to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation:

   a) The full name and booking information of all persons arrested;

   b) Calls for service logs and crime reports, subject to protections for protecting the confidentiality of victims; and,

   c) The addresses of individuals arrested by the agency and victims of a crime, where the requester declares under penalty of perjury that the request is made for a scholarly, journalistic, political, or governmental purpose, or that the request is made for

investigation purposes by a licensed private investigator. (Gov. Code, § 6254, subd. (f).)

5) Requires an agency to justify withholding any record by demonstrating that the record in question is exempt under express provisions of the PRA 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).)

6) Authorizes any person to institute proceedings for injunctive or declarative relief or writ of mandate in any court of competent jurisdiction to enforce his or her right to inspect or to receive a copy of any public record or class of public records under this chapter. (Gov. Code, § 6258.)

7) States that peace officer or custodial officer personnel records and records maintained by any state or local agency pursuant to citizens' complaints against personnel are confidential and shall not be disclosed in any criminal or civil proceeding except by discovery. This section shall not apply to investigations or proceedings concerning the conduct of peace officers or custodial officers, or any agency or department that employ these officers, conducted by a grand jury, a district attorney's office, or the Attorney General's office. (Pen. Code, § 832.7, subd. (a).)

8) States that police "personnel records" include "complaints, or investigations of complaints, concerning an event or transaction in which the officer participated, or which he or she perceived, and pertaining to the manner in which he or she performed his or her duties." (Pen. Code, § 832.8.)

9) Sets forth the procedure for obtaining peace officer personnel records or records of citizen complaints or information from these records. Specifically, 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. (Evid. Code, § 1043.)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: 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) **General Public Access to Peace Officer Records**: The purpose of the PRA is to prevent secrecy in government and to contribute significantly to the public understanding of government activities. (*City of San Jose v. Superior Court* (1999) 74 Cal.App.4th 1008, 1016-1017.) Thus, under the PRA, generally all public records are open to public inspection

unless a statutory exception exists. But, even if a specific exception does not exist, an agency may refuse to disclose records if on balance, the interest of nondisclosure outweighs disclosure. "The specific exceptions of section 6254 should be viewed with the general philosophy of section 6255 in mind; that is, that records should be withheld from disclosure only where the public interest served by not making a record public outweighs the public interest served by the general policy of disclosure." (53 Ops.Cal.Atty.Gen. 136 (1970).)

Notwithstanding the PRA, both police personnel records and police investigatory records are generally protected.

a) *Police Investigatory Records*: Under the PRA, police investigatory records are exempt from disclosure. (Gov. Code, § 6254, subd. (f).) The California Supreme Court has expressly rejected this to mean that all information reasonably related to criminal activity is exempt. "Such a broad exemption . . . would effectively exclude the law enforcement function of state and local governments from any public scrutiny under the California Act, a result inconsistent with its fundamental purpose." (*American Civil Liberties Union Foundation v. Deukmejian* (1982) 32 Cal.3d 440, 449.) Additionally, a record or document that contains some information that is exempt does not require the entire record to be exempt as long as the exempt material is reasonably segregable from the non-exempt material. (*Id*. at p. 453.)

b) *Police Personnel Records*: Under the Penal Code, certain police personnel records are deemed confidential. (Pen. Code, §§ 832.5, 832.7, 832.8.) "Personnel records" are defined to include any file maintained under that individual's name by the officer's employing agency and containing records relating to any of the following, among other things, "employee advancement, appraisal, or discipline" and "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." (Pen. Code, § 832.8, subds. (d) and (e).)

This bill loosens the protections afforded to specified peace officer records relating to use of force, sexual assault on a member of the public and pertaining to dishonesty in reporting, investigating, or prosecuting a crime.

3) **Case Law Review**: In *Copley-Press, Inv. v. Superior Court* (2006) 39 Cal.4th 1272, the California Supreme Court held that the Penal Code, as written, exempts peace officer personnel records from disclosure under the PRA. In *Copley-Press*, a newspaper publisher requested disciplinary appeal records for a particular officer that had been terminated. The newspaper publisher, Copley-Press, argued for disclosure by stating, among other reasons, that the records maintained by the Commission conducting the disciplinary appeal were not protected because they are not personnel records. The Court rejected this view and stated that the records are "personnel records" and therefore are confidential. It did not matter that the Commission, rather than the actual law enforcement agency was in possession of the documents. The Court relied largely on the language of Penal Code section 832.7, subdivision (c), which permits a department or agency that employs peace officers to disclose certain data against officers, but only "if that information is in a form which does not identify the individuals involved." The Court reasoned that the information demonstrates that the statute is intended to protect, among other things, the identity of officers subject to

complaints. (*Id.* at p. 1289.)

It should be noted that in *Copley-Press, supra,* 39 Cal.4th 1272, the Supreme Court stressed that weighing the matter of whether and when such records should be subject to disclosure is a policy decision for the Legislature, not the courts, to make. (*Id.* at p. 1299 ["In any event, it is for the Legislature to weigh the competing policy considerations"].) That is what this bill seeks to do. This bill would exempt the specific police personnel records noted above from confidentiality based on a policy decision that the public has a right to know about serious police misconduct.

A more recent California Supreme Court case considered release of records under the PRA and distinguished *Copley-Press*, *supra*. In *Long Beach Police Officers Association v. City of Long Beach* (2015) 59 Cal.4th 59, a police union sought to prevent disclosure of the names of Long Beach police officers involved in certain shootings while on-duty pursuant to exceptions in the PRA. The California Supreme Court, in reviewing the statutes that make police personnel records confidential (Pen. Code, §§ 832.7 and 832.8) stated that the information contained in the initial incident report of an on-duty shooting are typically not "personnel records" although it would result in an investigation by the employing agency and may lead to discipline. "Only the records *generated* in connection with that appraisal or discipline would come within the statutory definition of personal records. (Pen. Code, 832.8, subd. (d).) We do not read the phrase 'records relating to . . . employee . . . appraisal or discipline' so broadly to include every record that might be *considered* for purposes of an officer's appraisal or discipline, for a such a broad reading of the statute would sweep virtually all law enforcement records into the protected category of 'personnel records.'" (*Id.* at pp. 71-72.)

The Court also analyzed the investigatory records exception within the PRA (Gov. Code, § 6254, subd. (f)) to support its conclusion that not all records pertaining to an on-duty shooting are confidential. The Court noted that paragraphs (1) and (2) of subdivision (f) require the disclosure of the officer's name when a shooting occurs by the officer during an arrest, or in the course of responding to a complaint or request for assistance, or when the officer's name is recorded as a factual circumstance of the incident. "It thus appears that the Legislature draws a distinction between (1) records of factual information about an incident (which generally must be disclosed) and (2) records generated as part of an internal investigation of an officer in connection with the incident (which generally are confidential)." (*Long Beach Officers Association*, *supra*, 59 Cal.4th at p. 72.)

Likewise, the Court found that the exception against disclosure of personnel records if disclosure would constitute an unwarranted invasion of personal privacy, (Gov. Code, § 6254, subd. (c)), would in most instances weigh in favor of disclosure. "The public's substantial interest in the conduct of its peace officers outweighs, in most cases, the officer's personal privacy interest." (*Long Beach Officers Association*, *supra*, 59 Cal.4th at p. 73.)

The Court distinguished its finding from *Copley*, *supra*, where the court held that an officer's identity was protected from disclosure as a "personnel record." In *Copley*, *supra*, disclosing the name of the officer in disciplinary appeal records would link the officer to confidential personnel matters involving disciplinary action. In this case, disclosing the names of officers involved in various shootings would not imply that those shootings resulted in disciplinary action against the officers, and it would not link those names to any confidential personnel

matters or other protected information. (*Long Beach Officers Association*, *supra*, 59 Cal.4th at p. 73.)

Lastly, the Court considered the catchall exemption in the PRA that allows a public agency to withhold any public record if the agency shows 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.) The court concluded that vague safety concerns that apply to all officers involved in shootings are insufficient to tip the balance against disclosure. (*Long Beach Officers Association*, *supra*, 59 Cal.4th at p. 74.) Thus, the Court rejected the blanket rule sought by the union preventing disclosure of officer names every time an officer is involved in a shooting, and stated that that some circumstances may warrant the nondisclosure of names but the facts of this case did not warrant it. (*Id*. at p. 75.)

This bill is consistent with the Supreme Court's interpretation of the PRA. The California Supreme Court has found a policy favoring disclosure especially salient when the subject is law enforcement: In order to maintain trust in its police department, the public must be kept fully informed of the activities of its peace officers. (See *Long Beach Officers Association*, *supra*, 59 Cal.4th at p. 74, see also *Commission on Peace Officer Standards & Training v. Superior Court* (2007) 42 Cal.4th 278, 297.) In *Commission on Peace Officer Standards*, *supra*, the Supreme Court noted:

> Given the extraordinary authority with which they are entrusted, the need for transparency, accountability and public access to information is particularly acute when the information sought involves the conduct of police officers. In Commission on Police Officer Standards, the Supreme Court observed, "The public's legitimate interest in the identity and activities of peace officers is even greater than its interest in those of the average public servant. 'Law enforcement officers carry upon their shoulders the cloak of authority to enforce the laws of the state. In order to maintain trust in its police department, the public must be kept fully informed of the activities of its peace officers.' [Citation.] 'It is indisputable that law enforcement is a primary function of local government and that the public has a far greater interest in the qualifications and conduct of law enforcement officers, even at, and perhaps especially at, an "on the street" level than in the qualifications and conduct of other comparably low-ranking government employees performing more proprietary functions. The abuse of a patrolman's office can have great potentiality for social harm ….'" (*Commission on Police Officer Standards*, at pp. 297–298, fn. omitted.)

Release of the personnel records contemplated in this bill is precisely the kind of disclosure which will promote public scrutiny of, and accountability for, law enforcement.

4) **Discovery of Police Records in Criminal Cases**: In *Pitchess v. Superior Court* (1974) 11 Cal.3d 531, the California Supreme Court held that under certain circumstances, and upon an adequate showing, a criminal defendant may discover information from an officer's otherwise-confidential personnel file that is relevant to his or her defense. The California Legislature codified these procedures, which have become known as *Pitchess* motions, in Penal Code sections 832.7 and 832.8, and Evidence Code sections 1043-1045.

The *Pitchess* statutes require a criminal defendant to file a written motion that identifies and

demonstrates good cause for the discovery sought. If such a showing is made, the trial court then reviews the law enforcement personnel records in camera with the custodian, and discloses to the defendant any relevant information from the personnel file. (*People v. Mooc* (2001) 26 Cal.4th 1216, 1226.) Absent compliance with these procedures, peace officer personnel files, and information from them, are confidential and cannot be disclosed in any criminal or civil proceeding. The prosecution, like the defense, cannot discover peace officer personnel records without first following the *Pitchess* procedures. (*Alford v. Superior Court* (2003) 29 Cal.4th 1033, 1046.) Any records disclosed are subject to a mandatory order that they be used only for the purpose of the court proceeding for which they were sought. (*Id*. at p. 1042.)

This bill specifically states that its provisions do not affect or supersede the criminal discovery process, or the admissibility of peace officer personnel records. The purpose of the bill is to give the general public, not a criminal defendant, access to otherwise confidential police personnel records relating to serious police misconduct in an effort to increase transparency.

5) **Arguments in Support**:

a) According to the *California Newspaper Publishers Association*, a Co-sponsor of this bill, "Recent events, like the death of Stephon Clark in Sacramento, and those seared into California's history, like the beating of Rodney King in Los Angeles, underscore the immense public concern related to police and community interactions. Under current law, the public has little ability to access records related to police misconduct and use of force, depriving the press of the ability to fully investigate the activity of powerful public institutions.

"SB 1421 would make certain police records disclosable under the California Public Records Act, in three instances; 1) where there is a sustained finding of sexual misconduct, 2) where there is a sustained finding of an act of dishonestly like perjury, falsifying evidence, or other similar act that compromises an individual's due process rights, and 3) when there is a serious use of force which could lead to injury or death.

"Courts have long recognized that activity of police officers is of the highest public concern, particularly when they use serious or deadly force. Law enforcement officials wield immense power. For that reason, they should be subject to the same level of scrutiny as all other public employees, whose personnel records are disclosable in cases of heightened public concern. The same reasoning applies to the substantiated cases of sexual misconduct or proven dishonestly. In the case of police shootings, the public interest in disclosure is at its zenith, even when there is no claim of misconduct and a use of force is 'within policy.'

"SB 1421 provides a balanced framework for mandating the disclosure of records, while protecting investigatory and safety interests. As amended on May 25, SB 1421 sets forth a timing procedure for disclosure, allowing for delay if release would impair an important interest, but presuming disclosure after a certain time.

"A lack of transparency results in distrust. SB 1421 mandates transparency to help cure the problems secrecy has sown over the last 40 years. This disclosure scheme provides

flexibility for public agencies to protect due process rights, while giving certainty to families and the public who seek to know, 'What happened?'"

b) The *Santa Clara County District Attorney* writes, "In Santa Clara, since becoming District Attorney in 2010, I shifted our office away from routinely using secret grand juris when confronted with an officer-involved shooting. Instead, I would assign senior prosecutors known for their technical expertise, diligence and integrity to evaluate the incident and write a public report. While we are one of the only District Attorney's Office to successfully prosecute law enforcement officers for murder, in most cases, we have found that presenting our findings publicly can assure the public we take any official use of force seriously. People can see the evidence we considered, and they can understand the reasons for our conclusions. In other words, we treat people of our county like free adults who live in a democracy and who can be trusted to evaluate evidence and make decisions. I've even gotten letters of thanks from police officers who are grateful that their name has been cleared. It is a fair system. It is not 'anti-police', and it is not liberal or conservative. We have found that it works to protect the public, protect police officers against unfair allegations, and allows a more transparent and just form of governing.

"I believe that your bill, SB 1421, can achieve similar results across the state."

6) **Arguments in Opposition**:

a) According to the *California State Sheriffs' Association*, "For years, statute and case law have provided enhanced and appropriate privacy protections for peace officer personnel records as well as methods and circumstances under which records could be accessed. Unfortunately, in the name of bringing more transparency to these records and disciplinary proceedings, SB 1421 jeopardizes officer privacy.

"Additionally, SB 1421 opens records related to use of force investigations to public scrutiny, potentially months before an investigation is concluded. Mandating that records be released no later than 18 months from the use of force could jeopardize the integrity of a pending investigation or criminal proceeding. Additionally, the costs of opening these records to the public will be significant and will require additional resources."

b) The *California Association of Highway Patrolmen* and the *Peace Officers Research Association of California* "oppose this bill for the following reasons:

"There currently exists an unfair appellate process; disclosing the findings prior to a court fully reviewing and analyzing the matter would unduly prejudice what could be an innocent officer.

"The current law provides for confusion and uncertainty in the administrative disciplinary process; each department has its own regulations that it follows and some are more fair than others.

"In a case with mixed allegations (i.e., the department chooses to 'load up' the discipline by raising numerous allegations of misconduct, some of which would fall under the categories for disclosure and some of which would not), there is no way to parse out what

should and should not be disclosed.

"Should information about law enforcement discipline be publicized, a wave of habeas corpus petitions from convicted criminals would follow. Criminals previously arrested or investigated by an officer who is the subject of misconduct allegations would inundate the court system and render the court process confusing and unreliable.

"There would, likewise and for similar reasons, be an increase in civil lawsuits brought against governmental entities, forcing the entities to expend a great amount of public funds to defend against the lawsuits, rather than spending it on more important community needs.

"Due to the concern by law enforcement that their names might be disclosed, officers may hesitate before acting, creating an officer safety issue.

"Likewise, this could lead to officers being hesitant to become involved in an incident, potentially decreasing actively-engages law enforcement and resulting in a decrease in the safety of the communities (Chicago effect)."

7) **Related Legislation**: AB 931 (Weber) authorizes a peace officer to use deadly force only when such force is necessary to prevent imminent death or serious bodily injury to the officer or to another person. AB 931 is pending hearing in the Senate Appropriations Committee.

8) **Prior Legislation**:

   a) AB 1957 (Quirk), of the 2015-2016 Legislative Session, would have provided a set of procedures for disclosing footage from a law enforcement officer's body-worn camera. AB 1957 failed passage on the Assembly Floor.

   b) SB 1286 (Leno), of the 2015-2016 Legislative Session, would have provided greater public access to peace officer and custodial officer personnel records and other records maintained by a state or local agency related to complaints against those officers. SB 1286 was held in the Senate Appropriations Committee.

   c) AB 1648 (Leno), 2007 of the 2007-2008 Legislative Session, as introduced, would have overturned the California Supreme Court decision in *Copley Press, supra*, 39 Cal.4th 1272, and restore public access to peace officer records. AB 1648 failed passage in the Assembly Public Safety Committee.

   d) SB 1019 (Romero), of the 2007-2008 Legislative Session, would have abrogated the holding in *Copley Press*, *supra*, 39 Cal.4th 1272, for law enforcement agencies operating under a federal consent decree on the basis of police misconduct. SB 1019 failed passage in the Assembly Public Safety Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

American Civil Liberties Union of California (Co-Sponsor)
Anti-Recidivism Coalition (Co-Sponsor)
California Chapters of Black Lives Matter (Co-Sponsor)
California Faculty Association (Co-Sponsor)
California News Publisher Association (Co-Sponsor)
Communities United for Restorative Youth Justice (Co-Sponsor)
Youth Justice Coalition (Co-Sponsor)
A New Path
A New Way of Life
Advancement Project California
AF3IRM
AFSCME 3299
Alliance for Boys and Men of Color
Alliance San Diego
American Civil Liberties Union of California
Anaheim Community Coalition
Anti Police-Terror Project
Arab American Civic Council
Asian Americans Advancing Justice
Asian Law Alliance
Bay Area Chapter of Showing Up for Racial Justice
Bay Area Student Activist
Bend the Arc: Jewish Action
Berkeley City Council
Black American Political Association of California, Sacramento Chapter
Black Jewish Justice Alliance
Black and Pink, Inc.
Cage-Free Repair
California Alliance for Youth and Community
California Broadcasters Association
California Coalition for Women Prisoners
California Church IMPACT
California Federation of Teachers
California Immigrant Policy Center
California Immigrant Youth Justice Alliance
California Latinas for Reproductive Justice
California Public Defenders Association
California Nurses Association
Californians Aware
Californians for Justice
Californians United for a Responsible Budget
Catholic Worker
CDTech
Center on Juvenile and Criminal Justice
Chican@s Unidos

Children's Defense Fund
Chispa
Church in Ocean Park
Coalition for Justice and Accountability
Climate Action Campaign
Committee for Racial Justice
Community Coalition
Conference of California Bar Associations
Council on American-Islamic Relations, California
Courage Campaign, California
Critical Resistance
Davis People Power
Dignity and Power Now
Drain the NRA
Earl B. Gilliam Bar Association
East Bay Community Law Center
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 Interfaith Community Organization
Homeboy Industries
Immigrant Legal Resource Center
Indivisible StateStrong
InnerCity Struggle
Interfaith Movement
Interfaith Worker Justice San Diego
International Federation of Professional & Technical Engineers
IUCC Advocated for Peace and Justice
Journey House
Koreatown Immigrant Workers Alliance
LA Voice
LAANE
Law Enforcement Accountability Network
Lawyers' Committee for Civil Rights of the San Francisco Bay Area
Legal Services for Prisoners with Children
Long Beach Chapter of Showing Up for Racial Justice
Los Angeles National Lawyers Guild
March and Rally Los Angeles
Marin Chapter of Showing Up for Racial Justice
Media Alliance
Mexican American Legal Defense and Education Fund
Mid-City CAN
Mother's Quest
Motivating Individual Leadership for Public Advancement
National Association of Social Workers, California Chapter

National Juvenile Justice Network
NorCal Chapter of Showing Up for Racial Justice
Oak View ComUNIDAD
Oakland Privacy
Orange County Communities Organized for Responsible Development
Orange County Equality Coalition
Orange County Racial Justice Collaborative
Pacific Media Workers Guild
Partnership for the Advancement of New Americans
People Acting in Community Together
Pico California
PolicyLink
Prevention Institute
Project Rebound
Public Health Justice Collective
Reporters Committee
Resilience Orange County
Riverside Coalition for Police Accountability
Root & Rebound
R Street
Sacramento Chapter of Showing Up for Racial Justice
San Diego Chapter of Jack and Jill of America
San Diego LGBT Community Center
San Diego Organizing Project
San Diego Unified School District
San Francisco District Attorney
San Francisco National Lawyers Guild
San Francisco Public Defender
San Gabriel Valley Immigrant Youth Coalition
Santa Ana Building Healthy Communities
Santa Ana Unidos
Santa Barbara Chapter of Showing Up for Racial Justice
Santa Clara District Attorney
Service Employees International Union
Showing Up for Racial Justice Sacramento
Services, Immigrant Rights, and Education Network
Sillicon Valley De-BUG
Social Justice Learning Institute
Sonoma County Democratic Party
Southeast Asia Resource Action Center
Stop LAPD Spying Coalition
Street Level Health Project
Think Dignity
Transgender Law Center
UAW2865, UC Student-Workers Union
Union of Alameda County Public Defender's Office
UNITE HERE Local 11
Urban Peace Institute
Urban Peace Movement

Village Connect
W. Haywood Burns Institute
White People 4 Black Lives
Women's Foundation of California
Women For: Orange County
Young Women's Freedom Center
Youth ALIVE!
@Press4word

Nine Private Individuals

Opposition

Association of Deputy District Attorneys
Association for Los Angeles Deputy Sheriffs
California Association of Highway Patrolmen
California District Attorneys Association
California Peace Officers' Association
California Police Chiefs Association
California Narcotic Officers' Association
California State Sheriffs' Association
Chief Probation Officers of California
Los Angeles County Professional Peace Officers Association
Los Angeles Probation Officers
Los Angeles Police Protective League
Peace Officers Research Association of California
San Bernardino Sheriff-Coroner

Analysis Prepared by: Sandy Uribe / PUB. S. / (916) 319-3744

<u>EXHIBIT F</u>

Date of Hearing: August 8, 2018

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Lorena Gonzalez Fletcher, Chair
SB 1421 (Skinner) – As Amended August 6, 2018

Policy Committee: Public Safety Vote: 5 - 2

Urgency: No State Mandated Local Program: Yes Reimbursable: No

SUMMARY:

This bill makes specified personnel records of peace officers and correctional officers subject to disclosure under the California Public Records Act (PRA).

FISCAL EFFECT:

1) Costs (GF and special fund) for the Department of Justice to implement the new requirements, handle an increase in PRA requests, and potential increased litigation. Specifically, DOJ reports costs of $263,000 in 2018-19, $437,000 in 2019-20, and $422,000 in 2020-21 and ongoing.

2) Unknown, potentially significant costs, likely in the hundreds of thousands of dollars to millions of dollars in aggregate, to other state agencies that employ peace officers.

3) Significant ongoing non-reimbursable costs to local law enforcement agencies. Local costs to comply with PRA requirements are not reimbursable as state-mandated local costs.

COMMENTS:

1) **Background and purpose.** Personnel records are generally confidential and not subject to disclosure under PRA. This bill makes specified records related to peace officers and law enforcement investigations subject to disclosure under PRA. 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) **Related legislation.** AB 2327 (Quirk), of the current legislative session, requires a peace officer seeking employment with a law enforcement agency to give written permission for the hiring law enforcement agency to view the applicants general personnel file and any separate disciplinary files and requires law enforcement agencies to keep such records. AB 2327 is currently on the Senate Appropriations Committee's suspense file.

Analysis Prepared by: Jessica Peters / APPR. / (916) 319-2081

EXHIBIT G

SENATE THIRD READING
SB 1421 (Skinner)
As Amended August 20, 2018
Majority vote

SENATE VOTE: 25-11

Committee	Votes	Ayes	Noes
Public Safety	5-2	Jones-Sawyer, Carrillo, Kamlager-Dove, Quirk, Santiago	Lackey, Kiley
Appropriations	12-0	Gonzalez Fletcher, Bloom, Bonta, Calderon, Carrillo, Chau, Eggman, Friedman, Eduardo Garcia, Nazarian, Quirk, Reyes	

SUMMARY: Subjects specified personnel records of peace officers and correctional officers to disclosure under the California Public Records Act (PRA). Specifically, **this bill**:

1) Provides that, notwithstanding any other law, the following the following peace-officer or custodial-officer personnel records are not confidential and shall be made available for public inspection pursuant to the PRA:

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

      i) An incident involving an officer's discharge of a firearm at a person;

      ii) An incident involving an officer striking a person's head or neck with an impact weapon or projectile; or

      iii) An incident in which an officer's use of force against a person resulted in death, or in serious bodily injury.

   b) Any record relating to an incident in which a sustained finding was made by a law-enforcement or oversight agency that an officer engaged in sexual assault involving a member of the public, as defined; and,

   c) Any record relating to an incident in which a sustained finding was made by a law-enforcement or oversight agency of dishonesty by an officer relating to the reporting, investigation, or prosecution of a crime, or relating to the reporting of, or investigation of misconduct by, another officer, including but not limited to, any sustained finding of perjury, false statements, filing false reports, destruction, falsifying, or concealing of evidence.

2) States that the records requiring release include, but are not limited to, the framing allegations or complaint, any facts or evidence collected or considered, any reports of the investigation or analysis of the evidence or the conduct, and any findings or recommended findings, as well as any disciplinary or corrective action taken.

3) Prohibits the release of a record from a separate and prior investigation of a separate incident unless it is independently subject to disclosure.

4) Provides that if an investigation or incident involves multiple officers, information requiring sustained findings for release must be found independently against each officer. However, factual information about an officer's actions during an incident, or an officer's statements about an incident, shall be released if they are relevant to a sustained finding against another officer that is subject to release.

5) Requires an agency to redact disclosed records 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 officers and custodial officers;

   b) To preserve the anonymity of complainants and witnesses;

   c) 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 officers; and,

   d) Where there is a specific, particularized reason to believe that disclosure would pose a significant danger to the physical safety of the officer or others.

6) Allows redaction of records 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) Allows delayed disclosure for records relating to an investigation or court proceeding involving a use-of-force incident, as follows:

   a) 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 prosecutor decides whether to file criminal charges, whichever occurs first. After 60 days from the use-of-force incident, disclosure may still be delayed if it could reasonably be expected to interfere with the investigation. However, at 180 day intervals as necessary, the agency must justify the continued delayed disclosure, as specified. Information withheld must be disclosed no later than 18 months after the date of the incident if the investigation involves the officer who used forced. If the information involves someone other than the officer, then disclosure must occur no later than 18 months after the incident, unless there are extraordinary circumstances warranting continued delay;

   b) If criminal charges are filed in relation to the use-of-force incident, the agency may delay disclosure until a verdict is reached at trial, or in the case involving an entry of plea, until the time to withdraw the plea; and,

   c) During an administrative investigation into a use-of-force incident, the agency may delay disclosure until the 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 the criminal investigation related to the officer's use of force, whichever is later.

8) Prohibits release of records if the complaint is frivolous, as specified, or is deemed to be unfounded.

9) Specifies that these provisions do not affect or supersede the criminal discovery process, or the admissibility of peace officer personnel records.

10) Defines the following terms for purposes of the meaning of personnel records:

    a) "Sustained" means "a final determination by an investigating agency, commission, board, hearing officer, or arbitrator, as applicable, following an investigation and opportunity for an administrative appeal … , that the actions of the peace officer or custodial officer were found to violate law or department policy;" and

    b) "Unfounded" means "that an investigation clearly establishes that the allegation is not true."

11) Contains legislative findings and declarations about the authority of peace officers and the public's faith in the legitimacy of law enforcement.

EXISTING LAW:

1) Provides pursuant to the California Public Records Act (PRA) that all records maintained by local and state governmental agencies are open to public inspection unless specifically exempt.

2) Defines "public records" to include any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.

3) States that, except as in other sections of the PRA, this chapter does not require the disclosure of specified records, which includes among other things: records of complaints to, or investigations conducted by specified agencies, including any state or local police agency, or any investigatory or security files compiled by any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes.

4) Provides, notwithstanding any other law, state and local law enforcement agencies shall make public the following information, except to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation:

    a) The full name and booking information of all persons arrested;

    b) Calls for service logs and crime reports, subject to protections for protecting the confidentiality of victims; and,

    c) The addresses of individuals arrested by the agency and victims of a crime, where the requester declares under penalty of perjury that the request is made for a scholarly,

journalistic, political, or governmental purpose, or that the request is made for investigation purposes by a licensed private investigator.

5) Requires an agency to justify withholding any record by demonstrating that the record in question is exempt under express provisions of the PRA 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.

6) Authorizes any person to institute proceedings for injunctive or declarative relief or writ of mandate in any court of competent jurisdiction to enforce his or her right to inspect or to receive a copy of any public record or class of public records under this chapter.

7) States that peace officer or custodial officer personnel records and records maintained by any state or local agency pursuant to citizens' complaints against personnel are confidential and shall not be disclosed in any criminal or civil proceeding except by discovery. This section shall not apply to investigations or proceedings concerning the conduct of peace officers or custodial officers, or any agency or department that employ these officers, conducted by a grand jury, a district attorney's office, or the Attorney General's office.

8) States that police "personnel records" include "complaints, or investigations of complaints, concerning an event or transaction in which the officer participated, or which he or she perceived, and pertaining to the manner in which he or she performed his or her duties."

9) Sets forth the procedure for obtaining peace officer personnel records or records of citizen complaints or information from these records. Specifically, 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.

FISCAL EFFECT: According to the Assembly Appropriations Committee

1) Costs (General Fund and special fund) for the Department of Justice to implement the new requirements, handle an increase in PRA requests, and potential increased litigation. Specifically, DOJ reports costs of $263,000 in 2018-19, $437,000 in 2019-20, and $422,000 in 2020-21 and ongoing.

2) Unknown, potentially significant costs, likely in the hundreds of thousands of dollars to millions of dollars in aggregate, to other state agencies that employ peace officers.

3) Significant ongoing non-reimbursable costs to local law enforcement agencies. Local costs to comply with PRA requirements are not reimbursable as state-mandated local costs.

COMMENTS: 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."

Please see the policy committee analysis for a full discussion of this bill

Analysis Prepared by: Sandy Uribe / PUB. S. / (916) 319-3744 FN: 0004098

EXHIBIT H

SENATE THIRD READING
SB 1421 (Skinner)
As Amended August 23, 2018
Majority vote

SENATE VOTE: 25-11

Committee	Votes	Ayes	Noes
Public Safety	5-2	Jones-Sawyer, Carrillo, Kamlager-Dove, Quirk, Santiago	Lackey, Kiley
Appropriations	12-0	Gonzalez Fletcher, Bloom, Bonta, Calderon, Carrillo, Chau, Eggman, Friedman, Eduardo Garcia, Nazarian, Quirk, Reyes	

SUMMARY: Subjects specified personnel records of peace officers and correctional officers to disclosure under the California Public Records Act (PRA). Specifically, **this bill**:

1) Provides that, notwithstanding any other law, the following the following peace-officer or custodial-officer personnel records are not confidential and shall be made available for public inspection pursuant to the PRA:

   a) A record relating to the report, investigation, or findings of either of the following:

      i) An incident involving an officer's discharge of a firearm at a person; or,

      ii) An incident in which an officer's use of force against a person resulted in death or great bodily injury.

   b) Any record relating to an incident in which a sustained finding was made by a law-enforcement or oversight agency that an officer engaged in sexual assault involving a member of the public, as defined; and,

   c) Any record relating to an incident in which a sustained finding was made by a law-enforcement or oversight agency of dishonesty by an officer relating to the reporting, investigation, or prosecution of a crime, or relating to the reporting of, or investigation of misconduct by, another officer, including but not limited to, any sustained finding of perjury, false statements, filing false reports, destruction, falsifying, or concealing of evidence.

2) States that the records requiring release include:

   a) All investigative reports;

   b) Photographic, audio, and video evidence;

   c) Transcripts or recordings of interviews;

   d) Autopsy reports;

e) All materials compiled and presented to the district attorney or to any person or body charged with determining:

i) Whether to file criminal charges against an officer in connection with an incident;

ii) Whether the officer's action was consistent with law and agency policy for purposes of discipline or administrative action; or,

iii) What discipline to impose or corrective action to take;

f) Documents of findings and recommended findings; and,

g) 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.

3) Prohibits the release of a record from a separate and prior investigation of a separate incident unless it is independently subject to disclosure.

4) Provides that if an investigation or incident involves multiple officers, information requiring sustained findings for release must be found independently against each officer. However, factual information about an officer's actions during an incident, or an officer's statements about an incident, shall be released if they are relevant to a sustained finding against another officer that is subject to release.

5) Requires an agency to redact disclosed records 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 officers and custodial officers;

b) To preserve the anonymity of complainants and witnesses;

c) 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 officers; and,

d) Where there is a specific, particularized reason to believe that disclosure would pose a significant danger to the physical safety of the officer or others.

6) Allows redaction of records 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. This includes redaction of personal identifying information.

7) Allows delayed disclosure for records relating to an investigation or court proceeding involving a use-of-force incident, as follows:

a) 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 prosecutor decides whether to file criminal charges, whichever occurs first. After 60 days from the use-of-force incident, disclosure

may still be delayed if it could reasonably be expected to interfere with the investigation. However, at 180 day intervals as necessary, the agency must justify the continued delayed disclosure, as specified. Information withheld must be disclosed no later than 18 months after the date of the incident if the investigation involves the officer who used forced. If the information involves someone other than the officer, then disclosure must occur no later than 18 months after the incident, unless there are extraordinary circumstances warranting continued delay;

b) If criminal charges are filed in relation to the use-of-force incident, the agency may delay disclosure until a verdict is reached at trial, or in the case involving an entry of plea, until the time to withdraw the plea; and,

c) During an administrative investigation into a use-of-force incident, the agency may delay disclosure until the 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 the criminal investigation related to the officer's use of force, whichever is later.

8) Prohibits release of records if the complaint is frivolous, as specified, or is deemed to be unfounded.

9) Specifies that these provisions do not affect or supersede the criminal discovery process, or the admissibility of peace officer personnel records.

10) Specifies that nothing in these provisions is intended to limit the public's right of access as provided for in *Long Beach Police Officers Association v. City of Long Beach* (2015) 59 Cal.4th 59.

11) Defines the following terms for purposes of the meaning of personnel records:

a) "Sustained" means "a final determination by an investigating agency, commission, board, hearing officer, or arbitrator, as applicable, following an investigation and opportunity for an administrative appeal … , that the actions of the peace officer or custodial officer were found to violate law or department policy;" and,

b) "Unfounded" means "that an investigation clearly establishes that the allegation is not true."

12) Contains legislative findings and declarations about the authority of peace officers and the public's faith in the legitimacy of law enforcement.

EXISTING LAW:

1) Provides pursuant to the California Public Records Act (PRA) that all records maintained by local and state governmental agencies are open to public inspection unless specifically exempt.

2) Defines "public records" to include any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.

3) States that, except as in other sections of the PRA, this chapter does not require the disclosure of specified records, which includes among other things: records of complaints to, or investigations conducted by specified agencies, including any state or local police agency, or any investigatory or security files compiled by any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes.

4) Provides, notwithstanding any other law, state and local law enforcement agencies shall make public the following information, except to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation:

   a) The full name and booking information of all persons arrested;

   b) Calls for service logs and crime reports, subject to protections for protecting the confidentiality of victims; and,

   c) The addresses of individuals arrested by the agency and victims of a crime, where the requester declares under penalty of perjury that the request is made for a scholarly, journalistic, political, or governmental purpose, or that the request is made for investigation purposes by a licensed private investigator.

5) Requires an agency to justify withholding any record by demonstrating that the record in question is exempt under express provisions of the PRA 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.

6) Authorizes any person to institute proceedings for injunctive or declarative relief or writ of mandate in any court of competent jurisdiction to enforce his or her right to inspect or to receive a copy of any public record or class of public records under this chapter.

7) States that peace officer or custodial officer personnel records and records maintained by any state or local agency pursuant to citizens' complaints against personnel are confidential and shall not be disclosed in any criminal or civil proceeding except by discovery. This section shall not apply to investigations or proceedings concerning the conduct of peace officers or custodial officers, or any agency or department that employ these officers, conducted by a grand jury, a district attorney's office, or the Attorney General's office.

8) States that police "personnel records" include "complaints, or investigations of complaints, concerning an event or transaction in which the officer participated, or which he or she perceived, and pertaining to the manner in which he or she performed his or her duties."

9) Sets forth the procedure for obtaining peace officer personnel records or records of citizen complaints or information from these records. Specifically, 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.

FISCAL EFFECT: According to the Assembly Appropriations Committee

1) Costs (General Fund and special fund) for the Department of Justice to implement the new requirements, handle an increase in PRA requests, and potential increased litigation. Specifically, Department of Justice (DOJ) reports costs of $263,000 in 2018-19, $437,000 in 2019-20, and $422,000 in 2020-21 and ongoing.

2) Unknown, potentially significant costs, likely in the hundreds of thousands of dollars to millions of dollars in aggregate, to other state agencies that employ peace officers.

3) Significant ongoing non-reimbursable costs to local law enforcement agencies. Local costs to comply with PRA requirements are not reimbursable as state-mandated local costs.

COMMENTS: 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."

Please see the policy committee analysis for a full discussion of this bill

Analysis Prepared by: Sandy Uribe / PUB. S. / (916) 319-3744 FN: 0004669

EXHIBIT I

SENATE RULES COMMITTEE
Office of Senate Floor Analyses
(916) 651-1520 Fax: (916) 327-4478

UNFINISHED BUSINESS

Bill No: SB 1421
Author: Skinner (D), et al.
Amended: 8/23/18
Vote: 21

SENATE PUBLIC SAFETY COMMITTEE: 5-2, 4/17/18
AYES: Skinner, Bradford, Jackson, Mitchell, Wiener
NOES: Anderson, Stone

SENATE APPROPRIATIONS COMMITTEE: 5-2, 5/25/18
AYES: Lara, Beall, Bradford, Hill, Wiener
NOES: Bates, Nielsen

SENATE FLOOR: 25-11, 5/30/18
AYES: Allen, Atkins, Beall, Bradford, Dodd, Glazer, Hernandez, Hertzberg, Hill, Hueso, Jackson, Lara, Leyva, McGuire, Mitchell, Monning, Moorlach, Newman, Pan, Portantino, Roth, Skinner, Stern, Wieckowski, Wiener
NOES: Anderson, Bates, Berryhill, Fuller, Gaines, Morrell, Nguyen, Nielsen, Stone, Vidak, Wilk
NO VOTE RECORDED: Cannella, De León, Galgiani

ASSEMBLY FLOOR: Not available

SUBJECT: Peace officers: release of records

SOURCE: American Civil Liberties Union of California
Anti-Recidivism Coalition
California Chapters of Black Lives Matter
California Faculty Association
California News Publisher Association
Communities United for Restorative Youth Justice
Youth Justice Coalition

DIGEST: This bill permits inspection of specified peace and custodial officer records pursuant to the California Public Records Act (CPRA). This bill provides that 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.

Assembly Amendments (1) permit the redaction of personal identifying information and identity of officers, as specified; (2) pemove use of an electronic control weapon (i.e. "taser") from the list of circumstances that would require disclosure of records; (3) remove strikes with impact weapons or projectiles to the head or neck of a person from the list of circumstances that would require disclosure of records; (4) clarify the level of injury that requires release of records is "great bodily injury" due to the larger body of law interpreting that term, and existing incident tracking already done by law enforcement in lieu of "serious bodily injury;" (5) clarify that the dishonesty of an officer that would trigger release of records is related directly to the reporting, investigation, prosecution, including sustained findings of perjury, false statements, filing false reports, destruction, falsifying, or concealing evidence; (6) define and specify which records are subject to disclosure under the bill; (7) allow for extensions of time for release of information for ongoing criminal and personnel investigations, as specified; (8) specify that records of unfounded complaints shall not be released pursuant to this bill; and clarify that the legislature does not intend to change or overrule the California Supreme Court's holding in *Long Beach Police Officers Association v. City of Long Beach (2014) 59 Cal.4th 59.*

ANALYSIS:

Existing law:

1) Finds and declares in enacting the CPRA, 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.)

2) 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.

3) Requires the motion to include all of the following:

   a) 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.
   b) A description of the type of records or information sought.
   c) 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.
   d) 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.)

4) 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.

5) Provides that in determining relevance, the court examine the information in chambers in conformity with Section 915, and must exclude from disclosure:

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

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

6) 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).)

7) 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).)

8) 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).)

9) 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.)

10) 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).)

11) 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).)

12) 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 CPRA 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).)

13) 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).)

14) 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).)

This bill:

1) Provides the public access, through the CPRA, to records related to:

   a) Reports, investigation, or findings of:

      i) Incidents involving the discharge of a firearm at a person by an officer.

      ii) Incidents involving the discharge of an electronic control weapon at a person by an officer.

      iii) Incidents involving a strike with an impact weapon or projectile to the head or neck of a person by an officer.

iv) Incidents involving use of force by an officer which results in death or serious bodily injury.

b) 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.

c) 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.

2) 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.

3) 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.

4) 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.

5) Provides for redaction of records under the following circumstances:

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 officers.

b) To preserve the anonymity of complainants and witnesses (including whistleblowers).

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 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 officer or another person.

6) 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. Specifies a process for continued withholding of records if there is an active and ongoing investigation.

7) Clarifies that the bill does not impact civil and criminal discovery processes.

Background

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.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Assembly Appropriations Committee:

1) Costs (General Fund and special fund) for the Department of Justice to implement the new requirements, handle an increase in PRA requests, and potential increased litigation. Specifically, Department of Justice (DOJ) reports costs of $263,000 in 2018-19, $437,000 in 2019-20, and $422,000 in 2020-21 and ongoing.

2) Unknown, potentially significant costs, likely in the hundreds of thousands of dollars to millions of dollars in aggregate, to other state agencies that employ peace officers.

3) Significant ongoing non-reimbursable costs to local law enforcement agencies. Local costs to comply with PRA requirements are not reimbursable as state-mandated local costs.

SUPPORT: (Verified 8/28/18)

American Civil Liberties Union of California (co-source)
Anti-Recidivism Coalition (co-source)
California Chapters of Black Lives Matter (co-source)
California Faculty Association (co-source)

California News Publisher Association (co-source)
Communities United for Restorative Youth Justice (co-source)
Youth Justice Coalition (co-source)
A New Path
A New Way of Life
Advancement Project California
AF3IRM
AFSCME 3299
Alliance for Boys and Men of Color
Alliance San Diego
American Civil Liberties Union of California
Anaheim Community Coalition
Anti Police-Terror Project
Arab American Civic Council
Asian Americans Advancing Justice
Asian Law Alliance
Bay Area Chapter of Showing Up for Racial Justice
Bay Area Student Activist
Bend the Arc: Jewish Action
Berkeley City Council
Black American Political Association of California, Sacramento Chapter
Black Jewish Justice Alliance
Black and Pink, Inc.
Cage-Free Repair
California Alliance for Youth and Community
California Broadcasters Association
California Coalition for Women Prisoners
California Church IMPACT
California Federation of Teachers
California Immigrant Policy Center
California Immigrant Youth Justice Alliance
California Latinas for Reproductive Justice
California Public Defenders Association
California Nurses Association
Californians Aware
Californians for Justice
Californians United for a Responsible Budget
Catholic Worker
CDTech
Center on Juvenile and Criminal Justice

Chican@s Unidos
Children's Defense Fund
Chispa
Church in Ocean Park
Coalition for Justice and Accountability
Climate Action Campaign
Committee for Racial Justice
Community Coalition
Conference of California Bar Associations
Council on American-Islamic Relations, California
Courage Campaign, California
Critical Resistance
Davis People Power
Dignity and Power Now
Drain the NRA
Earl B. Gilliam Bar Association
East Bay Community Law Center
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 Interfaith Community Organization
Homeboy Industries
Immigrant Legal Resource Center
Indivisible StateStrong
InnerCity Struggle
Interfaith Movement
Interfaith Worker Justice San Diego
International Federation of Professional & Technical Engineers
IUCC Advocated for Peace and Justice
Journey House
Koreatown Immigrant Workers Alliance
LA Voice
LAANE
Law Enforcement Accountability Network
Lawyers' Committee for Civil Rights of the San Francisco Bay Area
Legal Services for Prisoners with Children

Long Beach Chapter of Showing Up for Racial Justice
Los Angeles National Lawyers Guild
March and Rally Los Angeles
Marin Chapter of Showing Up for Racial Justice
Media Alliance
Mexican American Legal Defense and Education Fund
Mid-City CAN
Mother's Quest
Motivating Individual Leadership for Public Advancement
National Association of Social Workers, California Chapter
National Juvenile Justice Network
NorCal Chapter of Showing Up for Racial Justice
Oak View ComUNIDAD
Oakland Privacy
Orange County Communities Organized for Responsible Development
Orange County Equality Coalition
Orange County Racial Justice Collaborative
Pacific Media Workers Guild
Partnership for the Advancement of New Americans
People Acting in Community Together
Pico California
PolicyLink
Prevention Institute
Project Rebound
Public Health Justice Collective
Reporters Committee
Resilience Orange County
Riverside Coalition for Police Accountability
Root & Rebound
R Street
Sacramento Chapter of Showing Up for Racial Justice
San Diego Chapter of Jack and Jill of America
San Diego LGBT Community Center
San Diego Organizing Project
San Diego Unified School District
San Francisco District Attorney
San Francisco National Lawyers Guild
San Francisco Public Defender
San Gabriel Valley Immigrant Youth Coalition
Santa Ana Building Healthy Communities

Santa Ana Unidos
Santa Barbara Chapter of Showing Up for Racial Justice
Santa Clara District Attorney
Service Employees International Union
Showing Up for Racial Justice Sacramento
Services, Immigrant Rights, and Education Network
Sillicon Valley De-BUG
Social Justice Learning Institute
Sonoma County Democratic Party
Southeast Asia Resource Action Center
Stop LAPD Spying Coalition
Street Level Health Project
Think Dignity
Transgender Law Center
UAW2865, UC Student-Workers Union
Union of Alameda County Public Defender's Office
UNITE HERE Local 11
Urban Peace Institute
Urban Peace Movement
Village Connect
W. Haywood Burns Institute
White People 4 Black Lives
Women's Foundation of California
Women For: Orange County
Young Women's Freedom Center
Youth ALIVE!
@Press4word
Numerous individuals

OPPOSITION: (Verified 8/28/18)

Association of Deputy District Attorneys
Association for Los Angeles Deputy Sheriffs
California Association of Highway Patrolmen
California District Attorneys Association
California Peace Officers' Association
California Police Chiefs Association
California Narcotic Officers' Association
California State Sheriffs' Association
Chief Probation Officers of California

Los Angeles County Professional Peace Officers Association
Los Angeles Probation Officers
Los Angeles Police Protective League
Peace Officers Research Association of California
San Bernardino Sheriff-Coroner

Prepared by: Gabe Caswell / PUB. S. /
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