

AMENDED IN SENATE APRIL 21, 2016

SENATE BILL

No. 1286

Introduced by Senator Leno
(Coauthors: Senators Mitchell and Moorlach)

February 19, 2016

An act to amend Sections 1043 and 1045 of the Evidence Code, to amend Section 3304.5 of the Government Code, and to amend Sections 832.5 and 832.7 of the Penal Code, relating to peace officers.

LEGISLATIVE COUNSEL'S DIGEST

SB 1286, as amended, Leno. Peace officers: records of misconduct.

~~(1) The Public Safety Officers Procedural Bill of Rights Act provides a set of rights and procedural protections to specified public safety officers. That act requires an administrative appeal instituted by a public agency under the act to be conducted in conformance with rules and procedures adopted by the local public agency. Existing law also establishes the Administrative Procedure Act, and requires enumerated state agencies to hold hearings under that act that are conducted by administrative law judges.~~

~~This bill would, notwithstanding any confidentiality afforded the personnel records of peace officers or custodial officers, authorize a municipality or local public agency that employs peace officers or custodial officers to hear and adjudicate administrative appeals, or to empower a body to hear and adjudicate those appeals, in proceedings that are open to the public and in which some or all documents filed are available for public inspection.~~

~~(2)~~

~~(1) Existing law requires a department or agency that employs peace officers to establish a procedure to investigate complaints by members~~

of the public against those officers. Existing law authorizes a department or agency that employs custodial officers to establish a similar procedure for its officers. Existing law establishes retention requirements and access privileges, as specified, for those complaints and related reports or findings. Existing law requires the department or agency to provide written notification to the complaining party of the disposition of a complaint made pursuant to those provisions within 30 days of the disposition.

This bill would require that notification to include, at a minimum, the charges framed in response to the complaint, the agency's disposition with respect to each of those charges, any factual findings on which the agency based its dispositions, and any discipline imposed or corrective action taken. By increasing the duties of local officials, the bill would impose a state-mandated local program.

(3)

(2) 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 provides that peace officer or custodial officer personnel records, as defined, and records maintained by any state or local agency relating to complaints against peace officers and custodial officers, or information obtained from these records, are confidential and prohibits the disclosure of those records in any criminal or civil proceeding except by discovery. Existing law describes exceptions to this policy for 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.

This bill would expand the scope of the exceptions to apply to, among other things, investigations or proceedings conducted by civilian review agencies, inspectors general, personnel boards, police commissions, civil service commissions, city councils, boards of supervisors, or any entities empowered to investigate peace officer misconduct on behalf of an agency, conduct audits of peace officer discipline on behalf of an agency, adjudicate complaints against peace officers or custodial officers, hear administrative appeals, or set policies or funding for the law enforcement agency. The bill would also require an entity described in those exceptions to comply with specified confidentiality provisions.

This bill would require, notwithstanding any other law, certain peace officer or custodial officer personnel records and records relating to complaints against peace officers and custodial officers to be available

for public inspection pursuant to the California Public Records Act. The bill would provide that this information includes but is not limited to, the framing allegation or complaint, the agency's full investigation file, any evidence gathered, and any findings or recommended findings, discipline, or corrective action taken. The bill would require records disclosed pursuant to this provision to be redacted only to remove personal data or information, such as a home address, telephone number, or identities of family members, other than the names and work-related information of peace officers and custodial officers, to preserve the anonymity of complainants and witnesses, or to protect confidential medical, financial, or other information in which disclosure would cause an unwarranted invasion of personal privacy that clearly outweighs the strong public interest in records about misconduct by peace officers and custodial officers, or ~~where~~ *if* there is a specific, particularized reason to believe that disclosure would pose a significant danger to the physical safety of the peace officer, custodial officer, or others. *The bill would authorize an agency to withhold a record that is disclosable pursuant to these provisions during an investigation into the use of force until the peace officer's employing agency determines whether the use of force violated a law or agency policy or until the district attorney with jurisdiction over the use of force determines whether to file criminal charges for the use of force, whichever is later, and would prohibit an agency from withholding those records for longer than 180 days from the date of the use of force.*

~~(4)~~

(3) Existing law establishes discovery procedures for obtaining peace officer and custodial officer personnel files and files relating to complaints against peace officers and custodial officers.

This bill would specify that those provisions do not bar or limit access in any proceeding to peace officer or custodial officer personnel records or records relating to complaints against peace officers and custodial officers, and would provide that those provisions do not require a party to a proceeding pending in a court or administrative agency to seek records through alternate means before filing a motion pursuant to the discovery provisions described above.

~~(5)~~

(4) 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.

(6)

(5) 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 with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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

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

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

3 (a) Peace officers help provide one of our state’s most
4 fundamental government services — keeping our communities
5 safe. These working men and women risk their lives daily in order
6 to protect the people of California. The public greatly appreciates
7 peace officers’ hard work and dedication to public safety. The
8 good names of these public servants should not be tarnished by
9 the actions of those amongst their ranks who may engage in
10 wrongdoing.

11 (b) To empower peace officers to fulfill their mission, the people
12 of California vest them with extraordinary authority — the powers
13 to detain, search, arrest, and use deadly force. Our society depends
14 on peace officers’ faithful exercise of that authority. Its misuse
15 can lead to grave constitutional violations, harms to liberty, and
16 the inherent sanctity of human life, as well as significant public
17 unrest.

18 (c) Concealing crucial public safety matters such as officer
19 violations of civilians’ rights, or inquiries into deadly use of force
20 incidents, undercuts the public’s faith in the legitimacy of law
21 enforcement, makes it harder for tens of thousands of hardworking
22 peace officers to do their jobs, and endangers public safety.

1 (d) The public has a strong, compelling interest in law
2 enforcement transparency because it is essential to having a just
3 and democratic society.

4 SEC. 2. Section 1043 of the Evidence Code is amended to read:

5 1043. (a) If discovery or disclosure is sought of peace officer
6 or custodial officer personnel records or records maintained
7 pursuant to Section 832.5 of the Penal Code and for which that
8 section or Section 832.7 of the Penal Code bar or limit disclosure,
9 or information from those records, the party seeking the discovery
10 or disclosure shall file a written motion with the appropriate court
11 or administrative body upon written notice to the governmental
12 agency that has custody and control of the records. The written
13 notice shall be given at the times prescribed by subdivision (b) of
14 Section 1005 of the Code of Civil Procedure. Upon receipt of the
15 notice the governmental agency served shall immediately notify
16 the individual whose records are sought.

17 (b) The motion shall include all of the following:

18 (1) Identification of the proceeding in which discovery or
19 disclosure is sought, the party seeking discovery or disclosure, the
20 peace officer or custodial officer whose records are sought, the
21 governmental agency that has custody and control of the records,
22 and the time and place at which the motion for discovery or
23 disclosure shall be heard.

24 (2) A description of the type of records or information sought.

25 (3) Affidavits showing good cause for the discovery or
26 disclosure sought, setting forth the materiality thereof to the subject
27 matter involved in the pending litigation and stating upon
28 reasonable belief that the governmental agency identified has the
29 records or information from the records.

30 (c) A hearing upon a motion for discovery or disclosure shall
31 not be held without full compliance with the notice provisions of
32 this section except upon a showing by the moving party of good
33 cause for noncompliance, or upon a waiver of the hearing by the
34 governmental agency identified as having the records.

35 (d) A party to a proceeding pending in a court or administrative
36 agency is not required to seek records through alternate means
37 before filing a motion pursuant to this section.

38 SEC. 3. Section 1045 of the Evidence Code is amended to read:

39 1045. (a) This article does not affect the right of access to
40 records of complaints, or investigations of complaints, or discipline

1 imposed as a result of those investigations, concerning an event
2 or transaction in which the peace officer or custodial officer, as
3 defined in Section 831.5 of the Penal Code, participated, or which
4 he or she perceived, and pertaining to the manner in which he or
5 she performed his or her duties, provided that information is
6 relevant to the subject matter involved in the pending litigation.

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

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

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

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

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

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

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

36 (f) This article does not bar or limit access in any proceeding
37 to peace officer or custodial officer personnel records or records
38 maintained pursuant to Section 832.5 of the Penal Code for which
39 Sections 832.5 or 832.7 of the Penal Code do not prohibit
40 disclosure.

1 ~~SEC. 4.~~ Section 3304.5 of the Government Code is amended
2 to read:

3 ~~3304.5.~~ (a) ~~An administrative appeal instituted by a public~~
4 ~~safety officer under this chapter shall be conducted in conformance~~
5 ~~with rules and procedures adopted by the local public agency.~~

6 ~~(b) Notwithstanding any confidentiality given to the personnel~~
7 ~~records of peace officers or custodial officers under this chapter~~
8 ~~or under the provisions governing regulation of peace officers~~
9 ~~contained in Chapter 4.5 (commencing with Section 830) of Title~~
10 ~~3 of Part 2 of the Penal Code, a municipality or local public agency~~
11 ~~that employs peace officers may hear and adjudicate an~~
12 ~~administrative appeal under this chapter, or the municipality or~~
13 ~~local public agency may empower a body to hear and adjudicate~~
14 ~~those appeals, in proceedings that are open to the public and in~~
15 ~~which some or all documents filed are available for public~~
16 ~~inspection.~~

17 ~~SEC. 5.~~

18 *SEC. 4.* Section 832.5 of the Penal Code is amended to read:

19 832.5. (a) (1) A department or agency in this state that
20 employs peace officers shall establish a procedure to investigate
21 complaints by members of the public against the personnel of these
22 departments or agencies, and shall make a written description of
23 the procedure available to the public.

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

30 (b) Complaints and any reports or findings relating to these
31 complaints shall be retained for a period of at least five years. All
32 complaints retained pursuant to this subdivision may be maintained
33 either in the peace officer's or custodial officer's general personnel
34 file or in a separate file designated by the department or agency
35 as provided by department or agency policy, in accordance with
36 all applicable requirements of law. However, prior to any official
37 determination regarding promotion, transfer, or disciplinary action
38 by an officer's employing department or agency, the complaints
39 described by subdivision (c) shall be removed from the officer's
40 general personnel file and placed in a separate file designated by

1 the department or agency, in accordance with all applicable
2 requirements of law.

3 (c) Complaints by members of the public that are determined
4 by the peace officer's or custodial officer's employing agency to
5 be frivolous, as defined in Section 128.5 of the Code of Civil
6 Procedure, or unfounded or exonerated, or any portion of a
7 complaint that is determined to be frivolous, unfounded, or
8 exonerated, shall not be maintained in that officer's general
9 personnel file. However, these complaints shall be retained in
10 other, separate files that shall be deemed personnel records for
11 purposes of the California Public Records Act (Chapter 3.5
12 (commencing with Section 6250) of Division 7 of Title 1 of the
13 Government Code) and Section 1043 of the Evidence Code.

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

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

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

28 (d) As used in this section and Section 832.7, the following
29 definitions apply:

30 (1) "Exonerated" means that the investigation clearly established
31 that the actions of the peace officer or custodial officer that formed
32 the basis for the complaint are not violations of law or department
33 policy.

34 (2) "General personnel file" means the file maintained by the
35 agency containing the primary records specific to each peace
36 officer's or custodial officer's employment, including evaluations,
37 assignments, status changes, and imposed discipline.

38 (3) "Sustained" means that the investigation disclosed sufficient
39 evidence to prove, by a preponderance of evidence, the truth of

1 the allegation in the complaint or that the actions of the peace
2 officer or custodial officer violated law or department policy.

3 (4) “Unfounded” means that the investigation clearly established
4 that the allegation is not true.

5 ~~(e) (1) A municipality, county, or agency that employs peace
6 officers may do both of the following:~~

7 ~~(A) Hold hearings to hear complaints by members of the public,
8 consider evidence, and adjudicate the complaints or recommend
9 adjudications.~~

10 ~~(B) Establish a body to hold the hearings described in
11 subparagraph (A).~~

12 ~~(2) Notwithstanding any confidentiality given to the general
13 personnel file or other personnel records of peace officers or
14 custodial officers, the hearings described in paragraph (1) may be
15 open to the public.~~

16 ~~SEC. 6.~~

17 *SEC. 5.* Section 832.7 of the Penal Code is amended to read:

18 832.7. (a) Except as set forth in subdivision (c), peace officer
19 or custodial officer personnel records and records maintained by
20 any state or local agency pursuant to Section 832.5, or information
21 obtained from these records, are confidential and shall not be
22 disclosed in any criminal or civil proceeding except by discovery
23 pursuant to Sections 1043 and 1046 of the Evidence Code.

24 (b) (1) This section shall not apply to investigations or
25 proceedings concerning the conduct of peace officers or custodial
26 officers, or an agency or department that employs those officers,
27 conducted by a grand jury, a district attorney’s office, the Attorney
28 General’s office, civilian review agencies, inspectors general,
29 personnel boards, police commissions, civil service commissions,
30 city councils, boards of supervisors, or any entities empowered to
31 investigate peace officer misconduct on behalf of an agency,
32 conduct audits of peace officer discipline on behalf of an agency,
33 adjudicate complaints against peace officers or custodial officers,
34 hear administrative appeals pursuant to Section 3304.5 of the
35 Government Code, or set policies or funding for the law
36 enforcement agency.

37 (2) An entity allowed access to the personnel and complaint
38 records of peace officers or custodial officers under this subdivision
39 shall comply with the confidentiality provisions of this section.

1 (c) (1) Notwithstanding any other law, all of the following
2 peace officer or custodial officer personnel records and records
3 maintained by any state or local agency pursuant to Section 832.5
4 shall be available for public inspection pursuant to the California
5 Public Records Act (Chapter 3.5 (commencing with Section 6250)
6 of Division 7 of Title 1 of the Government Code):

7 (A) A record related to the investigation or assessment of any
8 use of force by a peace officer that is likely to or does cause death
9 or serious bodily injury, ~~including~~ *including*, but not limited to,
10 the discharge of a firearm, use of an electronic control weapon or
11 conducted energy device, and any strike with an impact weapon
12 to a person's head.

13 (B) A record related to any finding by a law enforcement agency
14 or oversight agency that a peace officer or custodial officer engaged
15 in sexual assault, an excessive use of force, an unjustified search,
16 detention or arrest, racial or identity profiling, as defined in
17 subdivision (e) of Section 13519.4, discrimination or unequal
18 treatment on the basis of race, color, ethnicity, national origin, age,
19 religion, gender identity or expression, sexual orientation, or mental
20 or physical disability, or any other violation of the legal rights of
21 a member of the public.

22 (C) A record related to any finding by a law enforcement agency
23 of job-related dishonesty by a peace officer or custodial officer,
24 including, but not limited to, perjury, false statements, filing false
25 reports, or destruction or concealment of evidence.

26 (2) Records that shall be released pursuant to this subdivision
27 include, but are not limited to, the framing allegation or complaint,
28 the agency's full investigation file, any evidence gathered, and
29 any findings or recommended findings, discipline, or corrective
30 action taken.

31 (3) A record disclosed pursuant to this section shall be redacted
32 only to remove personal data or information, such as a home
33 address, telephone number, or identities of family members, other
34 than the names and work-related information of peace *officers* and
35 custodial officers, to preserve the anonymity of complainants and
36 witnesses, or to protect confidential medical, financial, or other
37 information in which disclosure would cause an unwarranted
38 invasion of personal privacy that clearly outweighs the strong
39 public interest in records about misconduct by peace officers and
40 custodial officers, or where there is a specific, particularized reason

1 to believe that disclosure of the record would pose a significant
2 danger to the physical safety of the peace officer, custodial officer,
3 or others.

4 *(4) An agency may withhold a record that is disclosable*
5 *pursuant to paragraph (1) during an investigation into the use of*
6 *force until the peace officer's employing agency determines*
7 *whether the use of force violated a law or agency policy or until*
8 *the district attorney with jurisdiction over the use of force*
9 *determines whether to file criminal charges for the use of force,*
10 *whichever is later, but shall not withhold a record that is*
11 *disclosable pursuant to paragraph (1) for longer than 180 days*
12 *from the date of the use of force.*

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

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

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

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

1 include, at a minimum, the charges framed in response to the
2 complaint, the agency's disposition with respect to each of those
3 charges, any factual findings on which the agency based its
4 dispositions, and any discipline imposed or corrective action taken.

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

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

12 ~~SEC. 7.~~

13 *SEC. 6.* The Legislature finds and declares that Section 6 of
14 this act, which amends Section 832.7 of the Penal Code, furthers,
15 within the meaning of paragraph (7) of subdivision (b) of Section
16 3 of Article I of the California Constitution, the purposes of that
17 constitutional section as it relates to the right of public access to
18 the meetings of local public bodies or the writings of local public
19 officials and local agencies. Pursuant to paragraph (7) of
20 subdivision (b) of Section 3 of Article I of the California
21 Constitution, the Legislature makes the following findings:

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

25 ~~SEC. 8.~~

26 *SEC. 7.* No reimbursement is required by this act pursuant to
27 Section 6 of Article XIII B of the California Constitution for certain
28 costs that may be incurred by a local agency or school district
29 because, in that regard, this act creates a legislative mandate that
30 is within the scope of paragraph (7) of subdivision (b) of Section
31 3 of Article I of the California Constitution.

32 However, if the Commission on State Mandates determines that
33 this act contains other costs mandated by the state, reimbursement
34 to local agencies and school districts for those costs shall be made
35 pursuant to Part 7 (commencing with Section 17500) of Division
36 4 of Title 2 of the Government Code.