
SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair
2019 - 2020 Regular Session

SB 1220 (Umberg) - Peace and custodial officers

Version: April 29, 2020

Urgency: No

Hearing Date: June 9, 2020

Policy Vote: PUB. S. 4 - 0

Mandate: Yes

Consultant: Shaun Naidu

Bill Summary: SB 1220 would require law enforcement agencies to provide prosecutors, upon request, with a list of officers who have had sustained findings of specified misconduct, are facing criminal prosecution, and are on probation. It also would require prosecutors to notify officers that they are being placed on the list and provide officers with an opportunity to be removed from the list, as specified.

Fiscal Impact:

- List assembly: Unknown, potentially-significant costs in the thousands of dollar, in the aggregate, for state and local law enforcement agencies to determine which officers' placement would be required on a *Brady* list and to update the list prior to each request from a prosecuting agency. Actual costs to each law enforcement agency would depend on if it currently maintains and updates a list of officers (such as the Department of Justice) or if it would need to create the list anew. Additionally, the requirement would be triggered only when a prosecuting agency requests a list. Consequently, some law enforcement agencies might not create a list, and incur the associated costs, if a prosecuting agency never makes a request. Local costs to comply with this measure would be subject to reimbursement by the state to the extent that the Commission on State Mandates determines that this bill imposes a state-mandated local program. Staff notes, however, if compliance costs to agencies are relatively low, it is unlikely that a test claim would be filed. There are over 500 local law enforcement agencies across the state. If it cost each agency \$1,000 to assembly and maintain a list, law enforcement costs associated with SB 1220 would surpass \$500,000 in the aggregate. (General Fund, local funds, various funds)
- Removal opportunity: Unknown, potentially-significant costs in the thousands of dollars, in the aggregate, for prosecuting agencies to provide officers an opportunity to be removed from a *Brady* list. Costs would depend on what type of process a prosecuting agency establishes. There are 58 county district attorney offices along with a number of city attorneys and city prosecutors and the Department of Justice that could maintain *Brady* lists and, therefore, subject to this requirement. Local compliance costs would be subject to reimbursement by the state to the extent that the Commission on State Mandates determines that this bill imposes a state-mandated local program, but, as noted above, it is unlikely that a test claim would be filed to the extent that costs are relatively low. (General Fund, local funds)

To notify officers of their placement on a *Brady* list likely would be minor ongoing costs. There is a question of whether the notification provision applies to officers who have been placed on a *Brady* list already. Presuming prospective application of this provision, it does not appear that those officers would need to be notified. If,

however, notification would be required, there likely would be higher one-time costs to notify those officers simultaneously.

Background: Existing state law, generally, 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. Additionally, officer personnel records are prohibited from being disclosed in any criminal or civil proceeding, except by discover. The records may be disclosed, however, 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. The prohibition from disclosing officer personnel records also do not apply—and, by law, must be disclosed upon request—to records related to incidents involving the discharge of a firearm at a person by an officer or in which the use of force by an officer against a person results in death or serious bodily injury or to records related to sustained findings of other specified incidents.

The U.S. Constitution requires prosecutors to provide defense attorneys all evidence that may exculpate a person who is charged with a crime. (*Brady v. Maryland* (1963) 373 U.S. 83.) As stated in the analysis of this bill by the Senate Committee on Public Safety: “The *Brady* decision has been applied to information regarding law enforcement officers and records related to their credibility and employment history. The landmark case in California applying the rule to law enforcement records is *Pitchess v. Superior Court*, (1974) 11 Cal.3d 531. ... [¶] The *Pitchess* procedure has been codified into California law as California Evidence Code sections 1043 and 1047.”

Also stated in the Senate Committee on Public Safety analysis:

In August of 2019 the California Supreme Court unanimously held that law enforcement agencies could share with prosecutors the names of officers on a *Brady* list, in very limited cases, without seeing[sic] a court order after the filing of a motion under the *Pitchess* code sections. *Association for Los Angeles Deputy Sheriffs v. Superior Court*, (2019) Case No. S243855.

The ruling permitted disclosure of specified “*Brady* alerts” in lieu of the full list. ... [¶] The ruling held that a law enforcement agency does not violate *Pitchess* “by sharing with prosecutors the fact that an officer, who is a potential witness in a pending criminal prosecution, may have relevant exonerating or impeaching material in that officer’s confidential personnel file.”

Proposed Law: This bill would:

- Require, starting January 1, 2022, any state or local law enforcement agency maintaining personnel records of peace officers or custodial officers to, upon request, provide a city, county, or state prosecuting agency a list of names and badge numbers of officers employed by the agency in the five years preceding the request who meet any of the following criteria:
 - The officer has had a sustained finding for any of the following conduct:
 - The officer engaged in sexual assault involving a member of the public.

- The officer engaged in dishonesty directly relating to the reporting, investigation, or prosecution of a crime or directly relating to the reporting of, or investigation of misconduct by, another officer, including any sustained finding of perjury, false statements, filing false reports, destruction, falsifying, or concealing of evidence.
- The officer has had sustained findings for conduct of moral turpitude or bias against a protected class.
- The officer is facing criminal charges.
- The officer is on probation for a criminal offense.
- Require the prosecuting agency to keep this list confidential, except as constitutionally required.
- Require a prosecuting agency, when placing an officer's name on a *Brady* list, to notify the officer as soon as practicable and provide the officer an opportunity to request the prosecuting agency remove the officer from the list.
- Allow a prosecuting agency, in order to comply with *Brady* requirements and with leave of a superior court judge, to release the records of an officer in a subsequent criminal case when the officer to whom the records pertain will be testifying.

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