
SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair
2019 - 2020 Regular Session

SB 1220 (Umberg) - Peace and custodial officers

Version: April 29, 2020

Policy Vote: PUB. S. 4 - 0

Urgency: No

Mandate: Yes

Hearing Date: June 18, 2020

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.

***** **ANALYSIS ADDENDUM – SUSPENSE FILE** *****

The following information is revised to reflect amendments
adopted by the committee on June 18, 2020

Fiscal Impact:

- Law enforcement agencies: Unknown, potentially-significant costs in the millions 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, which reports minimal compliance costs) 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. The California Highway Patrol estimates implementation costs of approximately \$6.8 million (with 27.0 temporary PY) and ongoing annual costs of \$1.1 million (with 5.0 permanent PY). The Department of Corrections and Rehabilitation reports implementation costs of roughly \$850,000 (with 7.0 PY) and ongoing annual costs of approximately \$700,000 (with 6.0 PY). (Special fund*, General Fund)

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 assemble and maintain a list, law enforcement costs associated with SB 1220 would surpass \$500,000 in the aggregate. (General Fund, local funds)

- Prosecuting agencies: Unknown, potentially-significant costs for prosecuting agencies to give officers an opportunity to provide information against placement on, or removal from, a *Brady* list and to consider the information proffered. Costs would depend on what type of process a prosecuting agency establishes, how many officers would have to be notified, and how many officers exercise their opportunity

for exclusion/removal. 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, would be 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)

Costs to notify officers prior to their placement on a *Brady* list is unknown but will be ongoing as new officer would be subject to inclusion on the list. It is unclear if the notification provision applies to officers who have been placed on a *Brady* list already. If notification would be required, there likely would be higher one-time costs to notify those officers simultaneously.

*Motor Vehicle Account, State Transportation Fund

Author Amendments:

- Define “moral turpitude,” for purposes of the *Brady* list to mean “conduct or crimes found to be conduct or crimes of moral turpitude in published appellate court decisions.”
- Allow the prosecution or a criminal defense attorney to use the notification that an officer has been placed on the *Brady* list to establish good cause for in camera review by a court under Evidence Code sections 1043 and 1045 (as opposed to establish good cause for the discovery or disclosure of the relevant personnel records of an officer as described in Evidence Code section 1043, subdivision (b)(3)).
- Require a prosecuting agency to notify an officer before the officer’s placement on a *Brady* list and provide the officer an opportunity to present information against placement on the list.
- Require the prosecuting agency to provide notice (and an opportunity to present information for removal from the list) to an officer as soon as practicable if prior notice of placement on the list cannot be provided consistently with the prosecutor’s discovery obligations.

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