Date of Hearing: August 5, 2020
Counsel: Cheryl Anderson

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

SB 1220 (Umberg) – As Amended July 28, 2020

SUMMARY: Requires each prosecuting agency to maintain a *Brady* list and any law enforcement agency to, annually and upon request, provide a prosecuting agency a list of names and badge numbers of officers employed in the five years prior to providing the list that meet specified criteria, including having a sustained finding for conduct of moral turpitude or group bias, and establishes a due process procedure for the officer to contest their inclusion on the list. Specifically, **this bill**:

1) Requires each prosecuting agency to maintain a *Brady* list, as specified.
2) Requires any law enforcement agencies maintaining personnel records of peace officers and custodial officers to, annually on and after January 1, 2022, provide to each city, county, or state prosecuting agency within its jurisdiction, and upon request at any time to any city county or state prosecuting agency, a list of names and badge numbers of officers employed by the agency in the five years prior to providing the list who meet specified criteria, including officers who:
   a) Have had sustained findings that they engaged in sexual assault involving a member of the public;
   b) Have had sustained findings that they engaged in an act of dishonesty related to the reporting, investigation, or prosecution of a crime or misconduct, including but not limited to a sustained finding of perjury, false statements, filing false reports, destruction, falsifying or concealing of evidence;
   c) Have had sustained findings for conduct of moral turpitude;
   d) Have had sustained findings for group bias;
   e) Have been convicted of a crime of moral turpitude;
   f) Who are facing currently pending criminal charges; or
   g) Who are on probation for a criminal offense.
3) Specifies that a "crime of moral turpitude means" conduct or crimes found to be conduct or crimes of moral turpitude in published appellate court decisions.
4) Provides that these requirements do not limit the discovery obligations of law enforcement or prosecutors under any other law.

5) Requires the prosecuting agency to keep this list confidential, except as constitutionally required through the criminal discovery process under *Brady v. Maryland* (1963) 373 U.S. 83 (*Brady*).

6) States that the list may be used by either a prosecutor or criminal defense attorney to establish good cause for in camera review by a court of confidential peace officer records or information, as specified.

7) Requires a prosecuting agency, prior to placing an officer's name on a *Brady* list, to notify the officer and provide the officer an opportunity to present information to the prosecuting agency against the officer's placement on the list. If that prior notice cannot be provided consistently with the prosecutor's discovery obligations, the prosecuting agency shall comply with its discovery obligations, notify the officer as soon as practicable, and provide the officer an opportunity to present information to the prosecuting agency favoring the officer's removal from the list.

8) Specifies that this provision does not create a right to judicial or administrative review of the prosecuting agency's decision to place or retain a peace officer's name on a *Brady* list.

9) States that the decision to place or retain an officer's name on a *Brady* list shall be within the sound discretion of the prosecuting agency.

10) Removes the limitation on relevance at trial and disclosure of information of an officer's misconduct that occurred more than five years before the event or transaction that is the subject of the litigation for which discovery or disclosure is sought, if the information is required to be disclosed pursuant to *Brady*.

EXISTING LAW:

1) Provides that in any case in which discovery or disclosure is sought of peace or custodial officer personnel records, as specified, 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 upon written notice to the governmental agency that has custody or control of the records, as specified. (Evid. Code, § 1043, subd. (a).)

2) Requires that upon receipt of the notice, the governmental agency served shall immediately notify the individual whose records are sought. (Evid. Code, § 1043, subd. (c).)

3) Provides that a motion for discovery or disclosure of personnel records shall 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 or custodial officer whose records are sought, the governmental agency that has custody and control of the records, and the time and place at which the motion for discovery or disclosure shall be heard;

   b) A description of the type of records or information sought; and,

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. (Evid. Code § 1043, subd. (b).)

4) States that nothing in this article shall 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, 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. (Evid. Code § 1045, subd. (a).)

5) States that in determining relevance, the court shall examine the information in chambers, as specified, and shall exclude from disclosure certain items, including 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. (Evid. Code, § 1045, subd. (b)(1).)

6) States that courts shall, in any case or proceeding permitting the disclosure or discovery of any peace or custodial officer records requested, 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).)

7) States that, except as specified, the personnel records of peace officers and custodial officers and records maintained by any state or local agency, or information obtained from these records, are confidential and shall not be disclosed in any criminal or civil proceeding except though specified litigation discovery processes. 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).)

8) Provides that the following peace officer or custodial records maintained by their agencies shall not be confidential and shall be made available for public inspection pursuant to the California Public Records Act (CPRA):

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; or

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) 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; and,

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. (Pen. Code, § 832.7, subd. (b)(1).)

9) Provides that a punitive action, or denial of promotion on grounds other than merit, shall not be undertaken by any public agency against any public safety officer solely because that officer's name has been placed on a *Brady* list, or that the officer's name may otherwise be subject to disclosure pursuant to *Brady v. Maryland* (1963) 373 U.S. 83. (Govt. Code, § 3305.5, subd. (a).)

10) States that this shall not prohibit a public agency from taking punitive action, denying promotion on grounds other than merit, or taking other personnel action against a public safety officer based on the underlying acts or omissions for which that officer's name was placed on a *Brady* list, or may otherwise be subject to disclosure pursuant to *Brady v. Maryland* (1963) 373 U.S. 83, if the actions taken by the public agency otherwise conform to this chapter and to the rules and procedures adopted by the local agency. (Govt. Code, § 3305.5, subd. (b).)

11) Specifies that evidence that a public safety officer's name has been placed on a *Brady* list, or may otherwise be subject to disclosure pursuant to *Brady v. Maryland* (1963) 373 U.S. 83, shall not be introduced for any purpose in any administrative appeal of a punitive action, except (Govt. Code, § 3305.5, subd. (c)):

    a) Evidence that a public safety officer's name was placed on a *Brady* list may be introduced if, during the administrative appeal of a punitive action against an officer, the underlying act or omission for which that officer's name was placed on a *Brady* list is proven and the officer is found to be subject to some form of punitive action. If the hearing officer or other administrative appeal tribunal finds or determines that a public safety officer has committed the underlying acts or omissions that will result in a punitive action, denial of a promotion on grounds other than merit, or any other adverse personnel action, and evidence exists that a public safety officer's name has been placed on a *Brady* list, or may otherwise be subject to disclosure pursuant to *Brady v. Maryland* (1963) 373 U.S. 83, then the evidence shall be introduced for the sole purpose of determining the type or level of punitive action to be imposed. (Govt. Code, § 3305.5, subd. (d).)

12) States that for purposes of this section, "Brady list" means any system, index, list, or other record containing the names of peace officers whose personnel files are likely to contain evidence of dishonesty or bias, which is maintained by a prosecutorial agency or office in accordance with the holding in *Brady v. Maryland* (1963) 373 U.S. 83. (Govt. Code, § 3305.5, subd. (e).)

FISCAL EFFECT:

COMMENTS:

1) **Author's Statement**: According to the author, "Under Brady v Maryland, the prosecution has a constitutional obligation not only to disclose what is already known to prosecutors, but also to learn of any such information that is known to law enforcement, including matters

related to witness credibility, even that of peace officers, and make that information available to the defense.

"Although Brady and subsequent decisions have been [in] place for many decades, some law enforcement agencies are not able to fully observe its requirements through organizational policy or practice because of the lack of clarity and the confusing patchwork of varied policies across prosecutorial jurisdictions. Brady does not provide a bright-line rule on the types of information that must be revealed and departments can have difficulty establishing protocols on compiling Brady materials from records that may be spread throughout a department.

"SB 1220 aims to strike a delicate balance between prosecutors' constitutional obligations and due process protections for peace officers. Firstly, this bill requires law enforcement agencies maintaining personnel records of peace officers to provide prosecuting agencies a list of names and badge numbers of officers employed by the agency in the five years preceding the request who meet specified criteria in accordance with the Brady case and subsequent decisions. Prosecuting agencies will be required to keep this list confidential, except as constitutionally required. Secondly, SB 1220 establishes California's first-ever minimum due process standards for officers by requiring prosecuting agencies, before placing an officer's name on a Brady list, to notify the officer and provide the officer an opportunity to request the prosecuting agency remove the officer from the list."

2) **Prosecutor Duty to Discover Exculpatory Evidence to the Defense**: In *Brady v. Maryland* (1963) 373 U.S. 83, 87, the United States Supreme Court held that federal constitutional due process creates an obligation on the part of the prosecution to disclose all evidence within its possession that is favorable to the defendant and material on the issue of guilt or punishment. *Brady* evidence includes evidence that impeaches prosecution witnesses, even if it is not inherently exculpatory. (*Giglio v. United States* (1972) 405 U.S. 150, 153-155.) Further, the prosecution's disclosure obligation under *Brady* extends to evidence collected or known by other members of the prosecution team, including law enforcement, in connection with the investigation of the case. (*In re Steele* (2004) 32 Cal.4th 682, 696-697, citing *Kyles v. Whitley* (1995) 514 U.S. 419, 437.) In order to comply with *Brady*, "the individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police." (*Kyles, supra*, 514 U.S. at p. 437; accord, *In re Brown* (1998) 17 Cal.4th 873, 879.)

   Evidence is material under *Brady* if there is a reasonable probability that the result of the proceeding would have been different had the information been disclosed. (*United States v. Bagley* (1985) 473 U.S. 667, 682.) The prosecution's duty to disclose exists whether or not the defendant specifically requests the information. (*United States v. Agurs* (1976) 427 U.S. 97, 107.) Failure to disclose evidence favorable to the accused violates due process irrespective of the good or bad faith of the prosecution. (*Brady, supra*, 373 U.S. at p. 87.)

3) **Discovery of Otherwise-Confidential Police Records in Criminal Cases**: Until recently, both police personnel records and records of citizens' complaints were generally protected from disclosure. (Gov. Code, § 6254, subd. (f); former Pen. Code, §§ 832.5 832.7, 832.8.) Before its amendment in 2018, Penal Code section 832.7 made specified peace officer records and information confidential and nondisclosable in any criminal or civil proceeding except pursuant to discovery under certain Evidence Code sections. (See Pen. Code, § 832.7,

subd. (a), as amended by Stats. 2003, ch. 102, § 1, p. 809.) "The first category of confidential records pertained to '[p]eace officer or custodial officer personnel records,' which included among other things certain records that relate to employee discipline or certain complaints and to investigations of complaints pertaining to how the officer performed his or her duties. (*Ibid*.; see § 832.8) The second category consisted of 'records maintained by any state or local agency pursuant to section 832.5' (former § 832.7, subd. (a)), which required '[e]ach department or agency in [California] that employs peace officers [to] establish a procedure to investigate complaints by members of the public against the personnel of these departments or agencies' and further required such '[c]omplaints and any reports or findings relating' to them be retained for 'at least five years' and 'maintained either in the peace or custodial officer's general personnel file or in a separate file' (§ 832.5, subds. (a)(1), (b); see also § 832.5, subds. (c), (d)(1)). The third category extended confidentiality to 'information obtained from' the prior two types of records. (former § 832.7, subd. (a).)" (*Becerra v. The Superior Court of the City of San Francisco* (2020) 44 CalApp5th 897, 914-915.)

These statutes, along with Evidence Code sections 1043 through 1047, codified the California Supreme Court's decision in *Pitchess v. Superior Court* (1974) 11 Cal.3d 531 (*Pitchess*). *Pitchess* recognized the right of a criminal defendant under certain circumstances, and upon an adequate showing, to compel the discovery of information from an officer's otherwise-confidential personnel file. These statutes set forth the procedures under which a person may or may not access peace officer personnel records. Evidence Code section 1043, subdivision (a) requires a party seeking discovery of officer personnel records to file a motion seeking the documents, with notice to the government agency that has custody or control over them. The motion must include "[a]ffidavits 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." (*Id*., subd. (b)(3).)

4) **Access to Certain Police Officer Records Under the California Public Records Act (CPRA) and Senate Bill No. 1421**: Effective January 1, 2019, Senate Bill No. 1421 amended sections 832.7 and 832.8 to provide disclosure under the CPRA of certain officer personnel records without the necessity of bringing a *Pitchess* motion – certain records involving use of force, sexual assault involving a member of the public, and incidents of officer dishonesty. (See Stats. 2018, ch. 988, §§ 2 & 3, eff. Jan. 1, 2019; see also § 832.7, subd. (a).) Officer personnel records otherwise remain confidential, and the *Pitchess* statutes "restrict a prosecutor's ability to learn of and disclose certain information regarding law enforcement officers." (*Association for Los Angeles Deputy Sheriffs v. Superior Court of Los Angeles County* (2019) 8 Cal.5th 28, 36 (ALADS).)

5) ***Brady* Lists**: Given the tension between the prosecutor's *Brady* obligations and the confidentiality concerns underlying the *Pitchess* statutes, some law enforcement agencies create what have become known as *Brady* lists. "These lists enumerate officers whom the agencies have identified as having potential exculpatory or impeachment information in their personnel files – evidence which may need to be disclosed to the defense under *Brady* and its progeny." (*ALADS, supra*, 8 Cal.5th at p. 36.)

In *ALADS*, the California Supreme Court considered the following question: "When a law enforcement agency creates an internal *Brady* list [citation], and a peace officer on that list is a potential witness in a pending prosecution, may the agency disclose to the prosecution (a)

the name and identifying number of the officer and (b) that the officer may have relevant exonerating or impeaching material in [that officer's] confidential personnel file …?" (*ALADS, supra*, 8 Cal.5th at pp. 36-37.) The Court concluded it could. (*Id.* at p. 37.)

In reaching this conclusion, the Court "[v]iew[ed] the *Pitchess* statutes 'against the larger background of the prosecution's [*Brady*] obligation [citation omitted],' and concluded "the Department may provide prosecutors with the *Brady* alerts at issue here without violating confidentiality." (*ALADS, supra*, 8 Cal.5th at p. 51.) The Court held that "the Department does not violate section 832.7(a) 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." (*Id.*, at p. 56.) The Court noted:

> To be clear, we do not suggest that permitting *Brady* alerts completely resolves the tension between *Brady* and the *Pitchess* statutes. Not all departments maintain *Brady* lists. And nothing guarantees that a *Brady* list will reflect all information that might prove "material" in each particular case. (*Brady, supra*, 373 U.S. at p. 87; see ante, pt. I.A.) But when a department seeks to transmit a *Brady* alert to prosecutors, allowing the department to do so mitigates the risk of a constitutional violation. With *Brady* in mind (see *Mooc, supra*, 26 Cal.4th at p. 1225), the term "confidential" (§ 832.7(a)) must be understood to permit such alerts.

(*ALADS, supra*, 8 Cal.5th at pp. 53-54.) "This is not to imply that *Brady* alerts are a constitutionally required means of ensuring *Brady* compliance; only that disclosure of *Brady* material is required, and the *Brady* alerts help to ensure satisfaction of that requirement." (*Id.* at p. 52.) Without *Brady* alerts, prosecutors may be unaware that a *Pitchess* motion should be filed and may lack the information necessary to make the required showing for the motion to succeed. (*Ibid.*)

6) **Purpose of this Bill**: As noted in *ALADS*, not all departments maintain *Brady* lists. This bill would require law enforcement agencies to provide a list of the names and badge numbers of the officers, who meet specified criteria, to prosecuting agencies. This information would be provided annually to any prosecuting agency within the law enforcement agency's jurisdiction and upon request to any prosecution agency. The list would be limited to officers employed by the agency in the five years prior to the list. This bill would also require prosecution agencies to maintain *Brady* lists.

Though this bill would not necessarily require that these lists contain all "material" information that a prosecutor is required to disclose under *Brady*, it also wouldn't relieve a prosecutor of the requirement to ensure full *Brady* compliance. As noted in *ALADS*, these lists would help "ensure satisfaction of that requirement." (*ALADS, supra,* 8 Cal.5th at p. 52.) Requiring departments to compile these otherwise-voluntary *Brady* lists and share them with the prosecution upon request is intended to "mitigate[] the risk of a constitutional violation." (*Id.* at pp. 53-54.)

Under the current *Pitchess* process, the law requires a court, in determining the relevance and whether to disclose information consisting of complaints concerning peace officer conduct, to exclude conduct that is more than five years older than the subject of the ligation. This bill

would delete that requirement where the information is required to be disclosed pursuant to *Brady*.

7) **Notice Requirement**: In *ALADS*, officers were notified of their inclusion on the *Brady* list. They were also "afforded an opportunity to object to their inclusion on the *Brady* list, by informing the Department that 'the deputy did not have a founded administrative investigation finding on one of the above policy violations' or that 'any such founded investigation had been overturned in a settlement agreement or pursuant to an appeal.'" (*ALADS, supra*, 8 Cal.5th at pp 37-38.)

   Similarly, this bill contains a notice requirement. This bill would require a prosecutor, prior to placing the officer's name on a *Brady* list, to notify the officer and provide the officer an opportunity to present information objecting to the officer's placement on the list. However, if that can't be done consistent with the prosecuting agency's discovery obligations, the agency must comply with its discovery obligations and notify the officer as soon as practicable.

8) **Argument in Support**: According to the *California District Attorneys Association*, the sponsor of this bill "SB 1220, which would mandate *Brady* notification from peace officers to prosecutors to ensure prosecutors are able to meet their constitutional obligations and to provide greater transparency in our criminal justice system.

   "The United States Constitution requires prosecutors to provide the defense in criminal cases with exculpatory evidence that is material to either guilt or punishment. (*Brady v. Maryland* (1963) 373 U.S. 83, 87.) Exculpatory evidence includes information the defense may use to impeach the credibility of peace officer witnesses, such as prior misconduct by the officer. This exculpatory information is commonly referred to as "*Brady* material." Of course, a prosecutor cannot disclose Brady material of which the prosecutor is unaware. While the overwhelming majority of peace officers' personnel files do not have *Brady* material, a percentage does. SB 1220 will help prosecutors to discover, and disclose, exculpatory evidence such as sustained disciplinary findings of group bias or dishonesty.

   "In recent years, the California Supreme Court has lauded and upheld the voluntary law enforcement practice of notifying prosecutors when an officer's file may contain *Brady* material. (*Association for Los Angeles Deputy Sheriffs v. Superior Court* (2019) 8 Cal.5th 28, 53-55; *People v. Superior Court (Johnson)* (2015) 61 Cal.4th 696, 713-714.) However, the court made clear that law enforcement agencies are not required to provide such information. Because no law compels it, some of California's largest agencies do not provide *Brady* notifications to prosecutors. Without this information, the defense is unable to confront law enforcement witnesses with prior misdeeds that may impact the witnesses' credibility.

   "SB 1220 would solve this problem by requiring law enforcement agencies to notify prosecutors when a peace officer has potential *Brady* material in his or her personnel file. Under this common sense and balanced legislation, agencies would provide prosecutors the officer's name and badge number. Because certain types of peace officer misconduct records are already subject to disclosure under the Public Records Act (2018 SB 1421, Skinner), counsel could obtain those records merely by requesting them. Otherwise, a judge would review the records and determine whether they should be disclosed to counsel. In addition, officers would have a right to notice when a prosecutor's office places their names on a list

of officers with potential *Brady* information in their personnel files. The officers would have the right to request removal if their names were included on the list without justification.

"Having consulted with the American Civil Liberties Union and the California Public Defenders Association, we support the July 28, 2020, amendments to the bill. These amendments mandate that prosecuting agencies in California maintain *Brady* lists and require law enforcement agencies to provide *Brady* notification to prosecuting agencies annually and at any other time upon request. In addition, the amendments clarify that nothing in this bill will delay or alter prosecutorial and law enforcement discovery obligations under other laws.

"By mandating *Brady* notification from law enforcement agencies to prosecutors, SB 1220 will ensure prosecutors are able to meet their Constitutional disclosure obligations and will improve the criminal justice system."

9) **Argument in Opposition**: According to the *California Attorneys for Criminal Justice*, "[Senate Bill 1220] runs afoul of the federal Constitution and conflicts with the California Supreme Court and United States Supreme Court decisions on the prosecution's *Brady v. Maryland*, 373 U.S. 83 (1963) (*Brady*).

"We support any efforts to encourage law enforcement to cooperate fully with the prosecuting agencies in criminal cases and, specifically, to provide information that might lead to the discovery of *Brady* material. However, the proposed addition of Penal Code section 1045(g)(1), places limits on the nature of the information to be disclosed and a time limit on that information, neither of which is consistent with *Brady* obligations. The proposed addition of section 1045(g)(4) also requires notice to the officers and provides them an opportunity to request removal from the list.

"First, *Brady* is a federal Constitutional requirement and cannot be limited by state statute. In fact, any attempt to limit *Brady* obligations would not only be unconstitutional but would likely result in unnecessary reversals and retrials. Just last year, the California Supreme Court reiterated, "Under *Brady*, a prosecutor must disclose to the defense evidence that is 'favorable to [the] accused' and 'material either to guilt or to punishment.'" *Association for Los Angeles Deputy Sheriffs v. Superior Court*, (2019) 8 Cal.5th 28, 40 (*ALADS*). This includes information about officers involved in the case, testifying or otherwise, that is favorable to the defense. Our Court went on to say, this is based on the federal Constitution. The United States Supreme Court has made it clear that a failure to abide by the *Brady* obligation can lead to reversal of any conviction where the failure to disclose might undermine "'confidence in the outcome of the trial.'" *ALADS, supra*, 8 Cal.5th at p. 40, quoting *Smith v. Cain* (2012) 565 U.S. 73, 75. The prosecutor can fail in this obligation, again under the federal Constitution, even if their office is not aware of information in possession of the law enforcement agencies involved in the case.

"Second, this proposed legislation attempts to limit the constitutional obligations under *Brady* with analogies to the technical protocols involved in *Pitchess v. Superior Court* (1974) 11 Cal.3d 531 (*Pitchess*). As the court in ALADS reiterated, *Pitchess* and its subsequent codification (Cal. Evid. Code §§1043-1047) was not based on constitutional grounds. Therefore, under *Pitchess* alone, the courts can impose restrictions on disclosure of material.

"However, the courts can only limit disclosure under Pitchess insofar as that disclosure is not also required by Brady because Brady is based on the federal Constitution which cannot be limited by California courts. Moreover, the California Legislature also cannot impose restrictions on Brady obligations by statute.

"Therefore, the limitation to disclosing only name and badge number to the prosecution and forcing the prosecutor to pursue more information may be convenient in a short-sighted sense. However, this puts an undue burden on the prosecutor to guess that Brady material may exist and then to file its own motion to compel disclosure of that information. Failure to get that right could lead to reversal of any conviction. That is why Brady lists were developed – they have nothing to do with Pitchess. They are designed to give the prosecutors a fighting chance to identify information that they are required to investigate and turn over to the defense if the information qualifies. Even though the prosecutor must meet the burden in court, police agencies have the duty to inform the prosecution of potential information. Law enforcement and the prosecutor should be on the same side.

"Third, *Brady* does not have a time limitation. The prosecutors are charged with the duty under *Brady* of knowing about all possible *Brady* information notwithstanding its age or other artificial factors. *Pitchess* legislation contains time limitations but that has nothing to do with the Constitutional requirements of *Brady*. SB 1220 purports to limit the reporting officer misconduct to "five years preceding the request." That limitation is both non-sensical and, even if it made sense, would violate *Brady*. It is non-sensical because the date of a request could be anytime, including, in delayed prosecutions, long after an officer left the force, meaning that misconduct at or near the time of the events charged against the defendant would not be disclosed. However, even if the proposed statute required, for example, five years before and five years after the events charged, that would still not meet the Constitutional requirements that would be based on the circumstances of the relevant misconduct.

"Fourth, the police officer has no employment rights regarding disclosure of *Brady* information. *Brady* iterates the Constitutional rights of the person accused. There is no balancing of interests of the employee or the right of the employee to suppress prior complaints sustained or otherwise. Either the misconduct is relevant to the defendant's rights under *Brady* or not. Whether the officer or the department or even the prosecutor feel that it embarrassing to the officer or whether it would be better from an employee/employer standpoint is not relevant."

10) **Related Legislation**:

a) SB 776 (Skinner) expands the categories of police personnel records that are subject to disclosure under the CPRA. SB 776 is set to be heard in this Committee on August 5, 2020.

11) **Prior Legislation**:

a) SB 1421 (Skinner), Chapter 988, Statutes of 2018, subjects specified personnel records of peace officers and correctional officers to disclosure under the CPRA.

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.

REGISTERED SUPPORT / OPPOSITION:

Support

California District Attorneys Association (Sponsor)
Alameda County District Attorney's Office
Los Angeles County District Attorney's Office
San Diego County District Attorney's Office
Santa Cruz County District Attorney's Office

Opposition

American Civil Liberties Union
California Attorneys for Criminal Justice
California Public Defenders Association

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