

Date of Hearing: August 11, 2020

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Lorena Gonzalez, Chair

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

Policy Committee: Public Safety

Vote: 6 - 0

Urgency: No

State Mandated Local Program: Yes

Reimbursable: Yes

SUMMARY:

This bill requires a prosecuting agency to maintain a list of peace officers who have engaged in misconduct in accordance with *Brady v. Maryland* (1963) 373 U.S. 83 (*Brady*). Specifically, this bill:

- 1) Requires a law enforcement agency to, annually and upon request, beginning January 1, 2022, provide to a prosecuting agency a list of the names and badge numbers of all peace officers employed by the agency who, in the prior five years, meet specified criteria.
- 2) Requires the prosecuting agency to keep this list confidential, except as constitutionally required through the criminal discovery process pursuant to *Brady*.
- 3) 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.

FISCAL EFFECT:

- 1) One-time costs (General Fund (GF)) to the California Highway Patrol (CHP) of approximately \$6.8 million dollars for additional training, policy updates and review of personnel records. Specifically, CHP estimates, among other costs, initial one-hour training for all personnel would cost \$980,944.00; approximately \$5.3 million dollars to review personnel records for inclusion on the *Brady* list; and approximately \$500,000 for software development.

Annual costs (GF) to CHP of approximately \$1.2 million dollars for ongoing training and review of personnel records in order to provide *Brady* information to state and local jurisdictions.

- 2) Possible cost pressures (General Fund (GF)/local funds) in the hundreds of thousands of dollars to low millions of dollars for local law enforcement agencies to review personnel files for purposes of providing *Brady* information to local prosecuting agencies. 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 reimbursable state-mandated local program. Case law currently allows law enforcement agencies to provide *Brady* information to district attorneys and many law enforcement agencies are already doing

so. If costs to local agencies are low enough given the existing requirements, it is possible none of them file a claim for reimbursement with the Commission on State Mandates.

- 3) Possible cost pressure (GF/local funds) in the hundreds of thousands of dollars to low millions of dollars to local district attorney offices to provide officers with notice and opportunity to object to their inclusion on the *Brady* list. As noted above, many law enforcement agencies already provide *Brady* lists to district attorneys and consistent with the requirements of Government Code section 3305. 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 reimbursable state-mandated local program.

COMMENTS:

- 1) **Purpose.** According to the author: “SB 1220 aims to strike a delicate balance between prosecutors' constitutional obligations and due process protections for peace officers.”
- 2) **Confidential Peace Officer Records.** Penal Code section 832.7 generally treats peace officer personnel records and information resulting from a review of those records as confidential. After SB 1421 (Skinner), Chapter 988, Statutes of 2018, made certain disciplinary records public pursuant to the California Public Records Act (CPRA), prosecutors could obtain some relevant information without a court order. In most cases, peace officer personnel records may not be released to a criminal defendant during the pendency of a defendant's case unless the defendant demonstrates good cause for an in camera review of those records (referred to as *Pitchess* motions). (*Pitchess v. Superior Court (Echeveria)* 11 Cal. 3d 531.) *Brady* requires district attorneys to provide criminal defendants any exculpatory records in their possession and tasks district attorneys with the responsibility of uncovering possible exculpatory evidence for production to defendants. This includes evidence a peace officer involved in the defendant's case has a history of dishonesty.

However, prior to 2019, courts ruled prosecutors were not eligible for confidential personnel records, even for the purposes of complying with *Brady* obligations. Prosecutors were required to file *Pitchess* motions just like a criminal defendant in order to obtain peace officer personnel records that may be relevant to the pending case.

- 3) **Recent Case Law.** In 2019, the California Supreme Court ruled prosecutors were entitled to receive peace officer personnel records without filing a *Pitchess* motion, so long as they do not disclose that information short of a *Brady* obligation. (*Association for Los Angeles Deputy Sheriffs v. Superior Court [Los Angeles Sheriff's Department]* (2019) 8 Cal.5th 28.) This bill requires local law enforcement to provide a list of names and badge numbers of officers with specific sustained allegations against them on annual basis and upon request.
- 4) **Arguments in Support.** According to the California District Attorneys Association:

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.

5) **Arguments in Opposition.** According to the Association of Los Angeles Deputy Sheriffs:

“... [T]o be Brady listed as a peace officer, is to be blacklisted for your entire career. This list carries significant consequences and repercussions; however, we accept that its use is appropriate for identifying officers who have demonstrated that they lack the credibility and honesty necessary to maintain a just justice system. Fundamentally, prosecutors DO NOT show regard for the impact of their decision(s) to place an officer on a Brady list has on that officer's career.”

6) **Related Legislation.** SB 776 (Skinner) expands the categories of police personnel records that are subject to disclosure under the CPRA. SB 776 is pending in this committee.

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