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VETO

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Bill No: SB 1220  
Author: Umberg (D)  
Amended: 8/26/20  
Vote: 27

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SENATE PUBLIC SAFETY COMMITTEE: 4-0, 5/27/20  
AYES: Skinner, Moorlach, Jackson, Wiener  
NO VOTE RECORDED: Bradford, Mitchell, Morrell

SENATE APPROPRIATIONS COMMITTEE: 4-1, 6/18/20  
AYES: Portantino, Hill, Leyva, Wieckowski  
NOES: Jones  
NO VOTE RECORDED: Bates, Bradford

SENATE FLOOR: 34-0, 6/26/20  
AYES: Allen, Atkins, Bates, Beall, Borgeas, Caballero, Chang, Dahle, Dodd, Durazo, Galgiani, Glazer, Lena Gonzalez, Grove, Hertzberg, Hill, Hueso, Hurtado, Jackson, Jones, Leyva, McGuire, Moorlach, Nielsen, Pan, Portantino, Roth, Rubio, Skinner, Stern, Umberg, Wieckowski, Wiener, Wilk  
NO VOTE RECORDED: Archuleta, Bradford, Melendez, Mitchell, Monning, Morrell

SENATE FLOOR: 35-1, 8/31/20  
AYES: Allen, Archuleta, Atkins, Bates, Beall, Borgeas, Caballero, Chang, Dahle, Dodd, Durazo, Galgiani, Glazer, Lena Gonzalez, Grove, Hertzberg, Hill, Hueso, Hurtado, Jackson, Leyva, McGuire, Monning, Moorlach, Nielsen, Pan, Portantino, Roth, Rubio, Skinner, Stern, Umberg, Wieckowski, Wiener, Wilk  
NOES: Melendez  
NO VOTE RECORDED: Bradford, Jones, Mitchell, Morrell

ASSEMBLY FLOOR: 67-0, 8/30/20 - See last page for vote

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**SUBJECT:** Peace and custodial officers

**SOURCE:** California District Attorneys Association

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**DIGEST:** This bill 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.

**ANALYSIS:**

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 through 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 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).)
  - 9) 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).)

- 10) 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).)
- 11) 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).)

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*.

## Background

Given the ruling by the California Supreme Court in *Assn. for LA Deputy Sheriffs v. Superior Court* which stated that only specified *Brady* alerts could be disclosed to prosecutors, not full lists, this bill seeks to amend the confidentiality and disclosure provisions of the *Pitchess* sections in the Evidence Code and the confidentiality section of the Penal Code to permit disclosure of officer names and badge numbers on a Brady list.

Just as the Legislature codified the Supreme Court's Ruling in *Pitchess v. Superior Court*, this bill seeks to codify the Supreme Court's ruling in the *ALADS* case. By codifying the decision, the Legislature will encourage compliance and cut down on litigation in and around non-compliance.

This bill takes a narrowly tailored approach to codifying the Supreme Court's decision. Opponents to the legislation fall into two camps. Law enforcement groups believe that the bill is too broad and the notice provisions given to officers are insufficient. Civil liberties and defense bar groups believe that the proactive disclosure requirements aren't broad enough and the officers should not be notified at all that they are going on a Brady list.

Opponents to this legislation argue that the bill is both too broad and too narrow in what it requires law enforcement agencies to turn over to prosecutors. Civil liberties groups would like to mandate disclosure of more information, while law enforcement advocates feel that the list is too broad. It is important to realize however, that this bill is only codifying proceedings that are in furtherance of the *Brady* decision and its progeny. Even if the California State Legislature wanted to legislate away *Brady* obligations, the Legislature would be unable to. Prosecutors and defense attorneys can still continue to enforce the *Brady* decision and its progeny as they already do, through the court process.

The scope of disclosure in this bill would be the following. It would include officers who did the following:

- Sustained findings that they engaged in sexual assault involving a member of the public.
- Sustained findings that they engaged in an act of dishonesty related to the reporting, investigation, or prosecution of a crime; including but not limited to a sustained finding of perjury, false statements, filing false reports, destruction, falsifying or concealing of evidence.
- Sustained findings for conduct of moral turpitude.
- Sustained findings for bias against a protected class.

- A conviction of a crime of moral turpitude.
- Is currently facing criminal charges.
- That the officer is on probation for a criminal offense.

Additionally, the officers are given a limited ability to object to their inclusion on the Brady list. Specifically, the bill requires 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. The decision to place or retain a peace officer's name on a Brady list shall be within the sound discretion of the prosecuting agency.

Since the ALADS decision reports have come in from around that state of varying compliance with the Supreme Court's ruling. The author and the proponents hope that by codifying the Court's decision with baseline and narrow guidelines, the decision will be followed and less unnecessary litigation over whether records should be turned over due to privacy concerns of law enforcement agencies.

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Assembly Appropriations Committee:

- 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 (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.

**SUPPORT:** (Verified 10/5/20)

California District Attorneys Association (source)

Alameda County District Attorney

Amador County District Attorney

Colusa County District Attorney

El Dorado County District Attorney

Escalante County District Attorney

Fresno County District Attorney

Humboldt County District Attorney

Lake County District Attorney

Los Angeles County District Attorney

Madera County District Attorney

Monterey County District Attorney

San Diego County District Attorney

San Francisco District Attorney

San Mateo County District Attorney

Santa Barbara County District Attorney

Santa Clara County District Attorney

Shasta County District Attorney

Siskiyou County District Attorney

Sonoma County District Attorney

Stanislaus County District Attorney

Sutter County District Attorney

Trinity County District Attorney

Ventura County District Attorney

Yolo County District Attorney

Yuba County District Attorney

**OPPOSITION:** (Verified 10/5/20)

American Civil Liberties Union of California  
Association for Los Angeles Deputy Sheriffs  
California Attorneys for Criminal Justice  
California Public Defenders Association  
California Statewide Law Enforcement Association  
Los Angeles Police Protective League  
Riverside Sheriffs' Association  
San Francisco Police Officers Association  
San Francisco Public Defenders

**GOVERNOR'S VETO MESSAGE:**

I am returning Senate Bill 1220 without my signature.

This bill would require each prosecuting agency to maintain a Brady list, which is a list containing the names of peace officers whose personnel files are likely to contain evidence of dishonesty or bias. This bill requires state and local law enforcement agencies to annually, or upon request, provide a list of names and badge numbers of officers employed by the agency in the preceding five years who have sustained findings of certain misconduct, are facing criminal prosecution, or are on probation to specified prosecuting agencies beginning January 1, 2022.

This bill would impose a significant state mandate and, because of the costs associated with this mandate, I cannot sign this bill. However, I share the author's goal of ensuring that our criminal justice system provides transparency and due process for criminal defendants. I am thereby directing the California Highway Patrol and the California Department of Corrections and Rehabilitation to develop a process in which they proactively provide information in the form of a list containing officer names and badge numbers to the 58 California district attorneys' offices in order to assist them to fulfill their prosecutorial discovery obligations.

**ASSEMBLY FLOOR:** 67-0, 8/30/20

**AYES:** Aguiar-Curry, Arambula, Bauer-Kahan, Berman, Bigelow, Bloom, Boerner Horvath, Bonta, Brough, Burke, Calderon, Carrillo, Cervantes, Chau, Chiu, Choi, Chu, Cooley, Cooper, Cunningham, Megan Dahle, Daly, Diep, Flora, Fong, Friedman, Gabriel, Gallagher, Cristina Garcia, Eduardo Garcia,

Gipson, Gloria, Gonzalez, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Kiley, Lackey, Levine, Limón, Low, Maienschein, Mayes, McCarty, Medina, Mullin, Muratsuchi, Nazarian, Obernolte, O'Donnell, Patterson, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Luz Rivas, Robert Rivas, Blanca Rubio, Salas, Santiago, Smith, Mark Stone, Weber, Wood, Rendon

NO VOTE RECORDED: Chen, Eggman, Frazier, Gray, Kamlager, Mathis, Reyes, Rodriguez, Ting, Voepel, Waldron, Wicks

Prepared by: Gabe Caswell / PUB. S. /

10/14/20 11:24:16

\*\*\*\* END \*\*\*\*