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## SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair  
2021 - 2022 Regular Session

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### SB 16 (Skinner) - Peace officers: release of records

**Version:** April 15, 2021

**Urgency:** No

**Hearing Date:** May 3, 2021

**Policy Vote:** PUB. S. 4 - 0, JUD. 8 - 1

**Mandate:** Yes

**Consultant:** Shaun Naidu

**Bill Summary:** SB 16 would expand the categories of police personnel records that are subject to disclosure under the California Public Records Act (PRA) and impose certain requirements regarding the time frame and costs associated with such PRA requests.

**Fiscal Impact:** Costs to individual state departments that employ officers vary, ranging from minor and absorbable to a significant increase in ongoing workload necessitating the hiring of additional personnel to respond to a greater number of PRA requests and review and redact the records accordingly. Please see Staff Comments, below, for some departments that have reported significant costs associated with this measure. All costs reported are exclusive of potential civil penalties or higher attorney's fees and court costs that may be imposed on the departments. (General Fund, special funds\*)

\* Motor Vehicle Account and various special funds

**Background:** According to the analysis of this bill by the Senate Committee on Judiciary:

Article I, section 3, of the California Constitution provides that "[t]he people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny." While this provision is not absolute, California's " 'strong public policy of the people's right to information concerning the people's business' " demands that limitations on the CPRA's right of access be narrow, and narrowly construed. [Citation omitted.]

The California Public Records Act applies to both state and local public entities, with specified exceptions. In 2014, the voters passed Proposition 42, which required local governments to comply with laws providing for public access to local government body meetings and records of government officials. Moreover, it eliminated reimbursement by the state for local compliance costs. While the passage of the proposition led to a cost savings of tens of millions of dollars annually in avoided reimbursements, those costs now are borne entirely by the local governments.

Notwithstanding the PRA, statute 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. In 2006, the California Supreme Court, interpreting the peace officer confidentiality law mentioned above, held that records of a peace officer's administrative disciplinary appeal from a sustained finding of misconduct was confidential and could not be disclosed to the public. (*Copley*

*Press, Inc. v. Superior Court* (2006) 39 Cal 4th 1272.) After the *Copley* decision, all peace officer or correctional officer personnel records were excluded from public disclosure, save limited circumstances. Then, in 2018, the Legislature established a limited right of access to certain peace officer and custodial officer personnel records. Specifically, there are four categories of these personnel records that must be provided to the public on request:

- Any record relating to the report, investigation, or findings arising from an incident in which an officer discharged a firearm at a person.
- Any record relating to the report, investigation, or findings arising from an officer's use of force that resulted in death or great bodily injury.
- Any record relating to an incident in which a sustained finding was made that an officer sexually assaulted a member of the public.
- Any record relating to an incident in which a sustained finding was made that an officer committed an act of dishonesty related to the report, investigation, or prosecution of a crime or another officer's misconduct, including sustained findings of perjury, making false statements, and destroying evidence.

**Proposed Law:** This bill would:

- Eliminate the five-year retention period for public complaints and related records, instead requiring that such records be "retained," including all complaints and reports currently in the possession of an agency or department.
- Expand the categories of officer personnel records that are subject to disclosure under the PRA to include:
  - Any record relating to the report, investigations, or findings of an incident involving the use of force to make a member of the public comply with an officer, force that is unreasonable, or excessive force against a person by a law enforcement officer (to take effect July 1, 2022);
  - Any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency that an officer engaged in conduct including, but not limited to, verbal statements, writings, online posts, recordings, and gestures, involving prejudice or discrimination against a person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status (to take effect July 1, 2022); and
  - Any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency that the peace officer made an unlawful arrest or conducted an unlawful search (to take effect July 1, 2022).
- Require that records subject to release include records where the officer resigned before the law enforcement or oversight agency concluded its investigation into the alleged incident.
- Require disclosed records be redacted to preserve the anonymity of whistleblowers and victims.
- Clarify that agencies and departments may withhold records pending a criminal or administrative investigation or proceeding to include all records subject to approval, not merely those relating to the discharge of a firearm or use of force resulting in death or great bodily harm. In cases where an agency or department may withhold records pending an administrative investigation, this bill would eliminate the option to

withhold records until 30 days after the close of a criminal investigation relating to that incident.

- Prohibit the cost of copies of records subject to disclosure that may be charged to the requesting party under the CPRA from including the cost of editing or redacting the records.
- Require records subject to disclosure be provided as quickly as possible and no later than 45 days from the date of the request, except where records are permitted to be withheld for a longer period due to specified conditions involving ongoing investigations. SB 16 would subject an agency or department to a civil penalty of \$1,000 per day for every day the records are not disclosed if the agency or department does not disclose the records within a 30-day grace period following the 45-day deadline (for a total of 75 days to disclose without a penalty).
- Entitle a member of the public who files a suit under the PRA to order disclosure of officer personnel records that are found to be improperly withheld or improperly redacted to twice the party's reasonable costs and attorney fees.
- Provide that, for purposes of releasing records pursuant to this subdivision, the attorney-client privilege cannot be asserted to limit the disclosure of factual information provided by the public entity to its attorney, factual information discovered by any investigation done by the public entity's attorney, or billing records related to the work done by the attorney.
- Require each department or agency that employs peace officers to request and review records of any investigations of misconduct involving a peace officer in the officer's general personnel file or a separate file designated by the department or agency before hiring a peace officer.
- Require every person employed as a peace officer to immediately report all uses of force by the officer to the officer's agency or department.
- Modify the evidentiary privilege relating to law enforcement records in court so that courts cannot automatically exclude from disclosure information consisting of complaints concerning conduct that took place more than five years before the event at issue in the case.

**Related Legislation:** SB 776 (Skinner, 2019-2020 Reg. Sess.) was substantially similar to this bill. SB 776 did not receive a concurrence vote in the Senate.

SB 1421 (Skinner, Ch. 988, Stats. 2018) subjected specified personnel records of peace officers and correctional officers to disclosure pursuant to the PRA.

**Staff Comments:** The California Highway Patrol reports personnel costs of \$1.245 million annually for 2.0 Staff Services Managers (SSMs), 6.0 Associate Governmental Program Analysts (AGPAs), and 1.0 Office Technician in order to comply with this measure. The department anticipates that, depending on the number of requests it receives, it would be required to redirect resources and staff to its Public Records Unit from other units and likely would incur an unknown amount of overtime costs during the first year of implementation.

The Department of Corrections and Rehabilitation report initial two-year costs of \$3.083 million for additional data storage costs, 19.0 AGPAs, and 4.0 SSMs for retroactive redacting staffing costs and annual ongoing costs of \$1.340 million for additional data storage costs, 8.0 AGPAs, and 2.0 SSMs for ongoing redaction staffing costs. The

Department of Insurance indicates that this bill will result in the following approximate costs related to an increased in redaction workload: \$8,000 in FY 2021-2022, \$59,000 in FY 2022-2023, and \$14,000 annually thereafter.

The University of California projects increase costs of \$150,000 annually across its system for the additional workload that SB 16 likely would produce. Costs to many state departments and entities that employ peace officers, such as the Department of Justice and the California State University, are unknown but could be significant. Actual costs would depend on a number of factors, including how many officers the entity employs, the frequency and types of interactions those officers have with members of the public, and the actual number of officer personnel record requests under the PRA that are actually made.

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