

SENATE THIRD READING
SB 16 (Skinner)
As Amended August 30, 2021
Majority vote

SUMMARY

Expands the categories of personnel records of peace officers and custodial officers that are subject to disclosure under the California Public Records Act (CPRA), imposes certain requirements regarding the time frames and costs associated with CPRA requests, and provides that the lawyer-client privilege does not prohibit disclosure of factual information and billing records, as specified.

Major Provisions

- 1) Expands the use of force category subject to disclosure under the CPRA to include:
- 2) A complaint alleging unreasonable or excessive force; and
- 3) A sustained finding that an officer failed to intervene against another officer who was using clearly unreasonable or excessive force.
- 4) Adds new categories of disclosure under the CPRA for:
- 5) Records relating to an incident in which a sustained finding was made of conduct involving prejudice or discrimination 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; and
- 6) Records relating to sustained findings of unlawful arrests and unlawful searches.
- 7) Provides that records otherwise subject to disclosure shall be released when an officer resigned before the law enforcement agency or oversight agency concluded its investigation into the alleged incident.
- 8) States that the identity of victims and whistleblowers may be redacted, in addition to witnesses and complainants, to preserve anonymity.
- 9) Specifies that persons who request records subject to disclosure are responsible for the cost of duplication, but not the cost of editing and redacting the records.
- 10) Clarifies that agencies may withhold records pending criminal or administrative investigations or proceedings, as specified, to include all records of misconduct or use of force. Eliminates the option to withhold records until 30 days after the close of a criminal investigation relating to the incident.
- 11) Requires records subject to disclosure be provided at the earliest possible time and no later than 45 days from the date of a request for their disclosure, except where records are permitted to be withheld for a longer period due to specified conditions involving ongoing investigations.

- 12) Provides that for purposes of releasing peace officer and custodial officer records under the CPRA, the lawyer-client privilege does not prohibit the disclosure of either of the following:
 - a) Factual information provided by the public entity to its attorney or factual information discovered in any investigation conducted by, or on behalf of, the public entity's attorney; or,
 - b) Billing records related to the work done by the attorney so long as those records do not relate to active and ongoing litigation and do not disclose information for the purpose of legal consultation between the public entity and its attorney.
- 13) Specify that this does not prohibit the public entity from asserting that a record or information within the record is exempted or prohibited from disclosure pursuant to any other federal or state law.
- 14) Makes the five-year minimum retention period for complaints against officers and any related reports and findings applicable to records in which there was not a sustained finding of misconduct. Requires retention for a minimum of 15 years for records where there was a sustained finding of misconduct. Provides that a record shall not be destroyed while a request related to that record is being processed or litigated.
- 15) Modifies the evidentiary limitation relating to law enforcement records in court proceedings so that courts cannot automatically exclude from discovery or disclosure information consisting of complaints concerning conduct that took place more than five years before the event that is the subject of the litigation.
- 16) Requires each department or agency to request and review a peace officer's personnel file prior to hiring the officer.
- 17) Requires every person employed as a peace officer to immediately report all uses of force by the officer to the officer's department or agency.
- 18) Provides a phased-in implementation of this bill so that records that relate to the new categories of misconduct added by this bill and occurred before January 1, 2022, shall not be required to be disclosed until January 1, 2023.
- 19) Makes other nonsubstantive changes.

COMMENTS

According to the Author

"After forty years of prohibiting public access to any and all police records, SB 1421, passed in 2018, finally gave Californians the right to obtain a very limited set of records on police misconduct. While SB 1421 was a hard fought breakthrough, California remains an outlier when it comes to the public's right to know about those who patrol our streets and enforce our laws. At least twenty other states have far more open access, with states like New York, Ohio and others having essentially no limitations on what records are publicly available. This bill, SB 16, opens California's door further and would make public law enforcement records on all uses of force,

wrongful arrests or wrongful searches, and for the first time, records related to an officer's biased or discriminatory actions. Additionally, SB 16 ensures that officers with a history of misconduct can't just quit their jobs, keep their records secret, and move on to continue bad behavior in another jurisdiction. SB 16 also mandates that agencies can only charge for the cost of duplication."

Arguments in Support

According to the *Conference of California Bar Associations*, "The CCBA seeks to promote justice through laws in California by bringing together attorney volunteers from around the State to identify, debate, and promote creative, non-partisan changes to the law for the benefit of all Californians. In 2015, the CCBA approved Resolution 07-02-2015, which sought to amend certain California laws to force disclosure of confidential police disciplinary records. The CCBA previously relied on Resolution 07-02-2015 to support SB 1421, from the 2017-2018 Regular Session. Because SB 16 is also germane to the goals of Resolution 07-02-2015, the CCBA similarly supports SB 16.

"In 2018, SB 1421 gave Californians, for the first time in 40 years, access to a limited set of records related to an officer's use of force, sexual misconduct, or on-the-job dishonesty. However, under current law, Californians have no right to know about officers who use excessive, but non-deadly, force or have a history of engaging in racist or biased actions. Such public access to information on officer conduct is essential to build trust between law enforcement and the communities they serve.

"While SB 1421 was an important breakthrough, it did not go far enough. For example, Californians would not have been able to access records about the past misconduct of Derek Chauvin, the Minneapolis officer who murdered George Floyd, unless his past use of force complaints were classified as 'causing great bodily injury' or 'deadly.' SB 16 remedies this by opening access to additional records, bringing California much closer to states like New York, Florida, Georgia, Kentucky, Ohio, and Washington. Opening access to additional categories of officer conduct provides communities with the tools to identify officers with a history of misconduct and hold local police agencies accountable.

"SB 16 also includes provisions to ensure that officers with a history of misconduct can't just quit their jobs, keep their records secret, and move on to another jurisdiction with their past actions not disclosed."

Arguments in Opposition

According to the *California Peace Officers Association*, "While a major impact of the proposed changes to [Penal Code (PC)] 832.5(b) would be fiscal (for record retention purposes), the legal policy impacts would center around agencies barely able to provide essential services to their communities by having to rearrange patrol personnel to oversee records management. This leads to less of a presence for the community policing that has helped drive down crime in California over the last several years.

"As written, SB 16 expands the already burdensome SB 1421 by unjustly providing for the disclosure of records of a complaint that alleges unreasonable or excessive force. This provision is neither practical from an administrative or judicial standpoint nor aiding in the effort to sustain trust between law enforcement and the communities they took an oath to serve. In fact, the release of officer records for every single incident involving any use of force, especially those in which the officer is entirely within departmental policy, will generate the misperception that

there was 'something wrong' with the officer's conduct when the proper legal findings and investigations found otherwise. That would open the agency up to unfair and undeserved scrutiny as these records are made public.

"Additionally, other conditions in PC 832.7, retain 'sustained' findings that an officer failed to intervene against another officer using force that is clearly unreasonable or excessive. There is no definition of 'clearly unreasonable,' nor 'clearly excessive,' thereby leaving both open to vague interpretation."

FISCAL COMMENTS

According to the Assembly Appropriations Committee:

- 1) Costs (General Fund (GF) and Legal Services Revolving Fund) of \$5.6 million dollars in fiscal year (FY) 2020-21 and \$9.7 million dollars annually thereafter to the Department of Justice (DOJ) in staff and infrastructure to review, redact and litigate CPRA cases related to an expanded universe of law enforcement personnel records.
- 2) Possible non-reimbursable costs, possibly in the millions of dollars, to local public entities statewide, including cities, counties and special districts to review and redact peace officer personnel records and litigate PRA cases. Local costs related to compliance with the CPRA are non-reimbursable pursuant to Proposition 40 (2012).

VOTES

SENATE FLOOR: 31-3-6

YES: Allen, Archuleta, Atkins, Becker, Bradford, Caballero, Cortese, Dodd, Durazo, Eggman, Glazer, Gonzalez, Hertzberg, Hueso, Kamlager, Laird, Leyva, Limón, McGuire, Min, Newman, Ochoa Bogh, Pan, Portantino, Roth, Rubio, Skinner, Stern, Umberg, Wieckowski, Wiener

NO: Borgeas, Grove, Wilk

ABS, ABST OR NV: Bates, Dahle, Hurtado, Jones, Melendez, Nielsen

ASM PUBLIC SAFETY: 6-1-1

YES: Jones-Sawyer, Bauer-Kahan, Lee, Quirk, Santiago, Wicks

NO: Seyarto

ABS, ABST OR NV: Lackey

ASM JUDICIARY: 8-2-1

YES: Stone, Chau, Chiu, Lorena Gonzalez, Holden, Kalra, Maienschein, Reyes

NO: Gallagher, Davies

ABS, ABST OR NV: Kiley

ASM APPROPRIATIONS: 12-4-0

YES: Lorena Gonzalez, Bryan, Calderon, Carrillo, Chau, Gabriel, Eduardo Garcia, Levine, Quirk, Robert Rivas, Akilah Weber, Kalra

NO: Bigelow, Megan Dahle, Davies, Fong

UPDATED

VERSION: August 30, 2021

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