
THIRD READING

Bill No: AB 1388
Author: Bryan (D)
Amended: 5/23/25 in Assembly
Vote: 21

SENATE PUBLIC SAFETY COMMITTEE: 6-0, 7/15/25
AYES: Arreguín, Seyarto, Caballero, Gonzalez, Pérez, Wiener

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

ASSEMBLY FLOOR: 69-0, 6/3/25 - See last page for vote

SUBJECT: Law enforcement: settlement agreements

SOURCE: Author

DIGEST: This bill prohibits prohibit a law enforcement agency from entering into an agreement with a peace officer that requires the agency to destroy, remove or conceal a record of a misconduct investigation, to halt or make particular findings in such an investigation, or to otherwise restrict disclosure of information about an allegation or investigation of misconduct, renders such agreements void and unenforceable, and specifies that agreements violative of this prohibition are subject to disclosure under the California Public Records Act.

ANALYSIS:

Existing law:

- 1) Establishes the people's right to transparency in government. ("The 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...") (California Constitution (Cal. Const.), art. I, Sec. 3.)

- 2) Establishes the California Public Records Act (CPRA), which generally provides that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state, and requires government agencies to disclose government records to the general public upon request, unless such records are exempted from disclosure. (Government Code (Gov. Code), § 7920.000 et seq.)
- 3) Provides that the CPRA does not require the disclosure of records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, the Office of the Attorney General and the Department of Justice (DOJ), the Office of Emergency Services and any state or local police agency, or any investigatory or security files compiled by any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes. (Gov. Code, § 7923.600.)
- 4) Provides that the CPRA does not require the disclosure of peace officer personnel files and background investigation files gathered by law enforcement agencies that are in the custody of the Commission on Peace Officer Standards and Training (POST) in connection with the commission's authority to verify eligibility for the issuance of certification and investigate grounds for decertification of a peace officer including any and all investigative files and records relating to complaints of, and investigations of, police misconduct, and all other investigative files and materials. (Gov. Code, § 7923.601.)
- 5) States that any department or agency in this state that employs peace officers shall establish a procedure to investigate complaints by members of the public against the personnel of these departments or agencies, and shall make a written description of the procedure available to the public. (Penal Code (Pen. Code), § 832.5, subd. (a)(1).)
- 6) States that any department or agency that employs custodial officers, as specified, may establish a procedure to investigate complaints by members of the public against those custodial officers employed by these departments or agencies, provided, however, that any procedure so established shall comply with rules pertaining to confidentiality of personnel records for peace officers. (Pen. Code, § 832.5, subd. (a)(2).)
- 7) Requires each department or agency in this state that employs peace officers to make a record 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. A peace officer seeking employment with a department

or agency in this state that employs peace officers shall give written permission for the hiring department or agency to view the officer's general personnel file and any separate file designated by a department or agency. (Pen. Code, § 832.12.)

- 8) Generally provides that the personnel records of peace officers and custodial officers and records maintained by a state or local agency or information obtained from these records, are confidential and shall not be disclosed in any criminal or civil proceeding except by discovery. This provision does 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, the Attorney General's office, or POST. (Pen. Code, § 832.7, subd. (a).)
- 9) Specifies that notwithstanding the above provision or any other law, the following peace officer or custodial officer personnel records and records maintained by a state or local agency are not confidential and shall be made available for public inspection pursuant to the 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.
 - ii. An incident involving the use of force against a person by a peace officer or custodial officer that resulted in death or in great bodily injury.
 - iii. A sustained finding involving a complaint that alleges unreasonable or excessive force.
 - iv. A sustained finding that an officer failed to intervene against another officer using force that is clearly unreasonable or excessive.
 - 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.
 - c) Any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency involving 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 false statements, filing false reports, destruction, falsifying, or concealing of evidence, or perjury.

- d) 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 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.
 - e) 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. (Pen. Code, § 832.7, subd. (b)(1).)
- 10) Provides that an agency may withhold a record of an incident otherwise subject to disclosure if there is an active criminal or administrative investigation, as specified. (Pen. Code § 832.7, subd. (b)(8).)
 - 11) Requires, prior to employing any peace officer, each agency in this state that employs peace officers to request, and the hiring agency to review, any records made available pursuant to the above paragraph. (Pen. Code, § 13510.8, subd. (a).)
 - 12) Authorizes POST to suspend or revoke the certification of a peace officer if the person has been terminated for cause from employment as a peace officer for, or has, while employed as a peace officer, otherwise engaged in, any serious misconduct, as specified. (Pen. Code, § 13510.8, subd. (a).)
 - 13) Requires each law enforcement agency to be responsible for the completion of investigations of allegations of serious misconduct by a peace officer, regardless of their employment status. (Pen. Code, § 13510.8, subd. (c).)
 - 14) Authorizes the Peace Officer Standards Accountability Division to review any agency or other investigative authority file, as well as to conduct additional investigation for purposes of decertification. (Pen. Code, § 13510.8, subd. (c).)

- 15) Requires records of an investigation of any person by POST to be retained for 30 years following the date that the investigation is deemed concluded by POST. (Pen. Code, § 13510.8, subd. (e).)
- 16) Requires any agency employing peace officers to report to POST any of several specified events, including the employment, appointment or termination or separation of a peace officer, any complaint, charge, or allegation of misconduct against a peace officer, as specified, and any finding or recommendation by a civilian oversight entity that a peace officer engaged in misconduct, as specified, among others. (Pen. Code, § 13510.9, subd. (a).)
- 17) Provides that in a case of separation from employment or appointment as a peace officer, the employing agency shall execute and maintain an affidavit-of-separation form and shall include whether the separation is part of the resolution of any criminal, civil, or administration charge or investigation. (Pen. Code, § 13510.9, subd. (c).)

This bill:

- 1) Provides that an agency employing a peace officer shall not enter into an agreement with a peace officer that requires any of the following:
 - a) The agency to destroy, remove or conceal a record of a misconduct investigation.
 - b) The agency to halt or make particular findings in a misconduct investigation.
 - c) The agency to otherwise restrict the disclosure of information about an allegation or investigation of misconduct pursuant to any provision of law.
- 2) Provides that an agreement inconsistent with this prohibition is contrary to law and public policy and is void and unenforceable.
- 3) Provides that agreements prohibited under this bill are subject to disclosure under the CPRA.
- 4) Includes a severability clause.
- 5) Includes various legislative findings and declarations.

Comments

In 2018, the Legislature passed SB 1421 (Skinner, Ch. 988, Stats. of 2018), which represented a paradigm shift in the public's ability to access previously

confidential peace officer personnel records. SB 1421 removed Pitchess protection from records pertaining to officer-involved shootings, uses of force resulting in death or great bodily injury, and sustained findings of sexual assault or dishonesty, and SB 1421 required agencies to redact specified personal information, information the release of which “would cause an unwarranted invasion of personal privacy that clearly outweighs the strong public interest in records about possible misconduct,” and information that, if unredacted, would pose a significant danger to the physical safety of the peace officer or another person.

In 2021, the Legislature passed SB 16 (Skinner, Ch. 402, Stats. of 2021), building upon the transparency provisions enacted by SB 1421, and responding to widespread criticism that law enforcement agencies were flouting the law via litigation and other tactics to delay the release of records. SB 16 exempted four additional categories of peace officer records from the confidentiality requirement in Penal Code Section 832.7, including those pertaining to sustained findings of unreasonable or excessive use of force, sustained findings that an officer failed to intervene in another officer’s unreasonable or excessive use of force, sustained findings that an officer engaged in prejudice or discrimination on the basis of a protected characteristic, and sustained findings that an officer made an unlawful arrest or conducted an unlawful search. Central to these provisions is the requirement that, to be subject to disclosure, these findings be “sustained,” which is defined as a final determination by an investigating agency, commission, board, hearing officer, or arbitrator following an investigation and opportunity for an administrative appeal, as specified, that the actions of the peace officer or custodial officer were found to violate the law. SB 16 also added a provision to Section 832.7 requiring that disclosable records include any records related to an incident that falls within the exempted categories in which the peace officer resigned before the law enforcement agency or oversight agency concluded its investigation into the alleged incident.

Also in 2021, the Legislature passed sweeping legislation requiring POST to create a new, mandatory certification process for peace officers (SB2, Bradford, Ch. 409, Stats. of 2021). SB 2 required POST to create a certification program for peace officers, who must receive a proof of eligibility and a basic certificate in order to serve in that capacity. Additionally, SB 2 provided a new mechanism by which POST may investigate and review allegations of “serious misconduct” against an officer, and defined “serious misconduct” to include a host of behaviors unbecoming a peace officer, such as dishonesty, abuse of power, criminal behaviors, demonstration of bias, participation in a law enforcement gang, and others. The measure empowered POST to make a determination on whether, at the conclusion of that investigation, to suspend or revoke the officer’s certification,

thereby precluding them from obtaining employment as a peace officer in California. SB 2 also amended Penal Code Section 832.7 by making it inapplicable 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, the Attorney General's office, or the Commission on Peace Officer Standards and Training, rendering those records subject to disclosure under CPRA.

The impetus for this bill is a recent investigation by the San Francisco Chronicle in conjunction with UC Berkeley's Investigative Reporting Program revealing the prevalence of "clean record agreements," which are secret legal settlements used by law enforcement agencies to conceal allegations of misconduct. Under these agreements, which are effectively non-disclosure agreements (NDAs), officers agree to resign quietly in exchange for having disciplinary records destroyed, sealed, or amended to look like a simple resignation.

This bill seeks to prohibit clean record agreements by specifically prohibiting a law enforcement agency from entering into an agreement with a peace officer that requires the agency to destroy, remove or conceal a record of a misconduct investigation, to halt or make particular findings in such an investigation, or to otherwise restrict the disclosure of information about an allegation or investigation of misconduct. The bill goes further and states that a provision of an agreement inconsistent with this prohibition is contrary to law and public policy and is void and unenforceable. Additionally, the bill amends Penal Code Section 832.7, adding to the list of disclosable police personnel records established by SB 1421 and SB 16 any agreement prohibited by its provisions.

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

SUPPORT: (Verified 8/18/25)

ACLU California Action

Afro Upris

Asian American Journalists Association, Los Angeles

California Broadcasters Association

California Innocence Coalition

California News Publishers Association

California Public Defenders Association

Californians for Safety and Justice (CSJ)

Ccnma: Latino Journalists of California

Center on Juvenile and Criminal Justice

Chispa, a Project of Tides Advocacy

City of Pinole
Courage California
Debt Free Justice California
Ella Baker Center for Human Right
Felony Murder Elimination Project
First Amendment Coalition
Freedom of the Press Foundation
Friends Committee on Legislation of California
Initiate Justice
Initiate Justice Action
Justice2jobs Coalition
Kpfk
LA Defensa
League of Women Voters of California
Los Angeles Press Club
National Press Photographers Association
National Writers Union
Oakland Privacy
Orange County Press Club
Pacific Media Workers Guild (the Newsguild-communications Workers of America Local 39521)
Radio Television Digital News Association
Riverside County Democratic Party
Rubicon Programs
Sister Warriors Freedom Coalition
Starting Over Strong

OPPOSITION: (Verified 8/18/25)

Los Angeles County Professional Peace Officers Association
Peace Officers Research Association of California

ASSEMBLY FLOOR: 69-0, 6/3/25

AYES: Addis, Aguiar-Curry, Ahrens, Alanis, Alvarez, Arambula, Ávila Fariás, Bauer-Kahan, Bennett, Berman, Boerner, Bonta, Bryan, Caloza, Carrillo, Connolly, Davies, DeMaio, Dixon, Elhawary, Flora, Fong, Gabriel, Gallagher, Garcia, Gipson, Jeff Gonzalez, Mark González, Haney, Harabedian, Hart, Hoover, Irwin, Jackson, Kalra, Krell, Lackey, Lee, Lowenthal, Macedo, McKinnor, Muratsuchi, Nguyen, Ortega, Pacheco, Papan, Patel, Patterson, Pellerin, Petrie-Norris, Quirk-Silva, Celeste Rodriguez, Rogers, Sanchez,

Schiavo, Schultz, Sharp-Collins, Solache, Soria, Stefani, Ta, Tangipa, Valencia,
Wallis, Ward, Wicks, Wilson, Zbur, Rivas
NO VOTE RECORDED: Bains, Calderon, Castillo, Chen, Ellis, Hadwick, Ramos,
Ransom, Michelle Rodriguez, Blanca Rubio

Prepared by: Alex Barnett / PUB. S. /
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