

CONCURRENCE IN SENATE AMENDMENTS

AB 1388 (Bryan)

As Amended September 9, 2025

Majority vote

SUMMARY

Prohibits a law enforcement agency from entering into an agreement with the peace officer that requires the agency to destroy a record of a misconduct investigation, or otherwise halt or make particular findings in a misconduct investigation, declares any such agreements void and unenforceable, and specifies that such agreements are subject to disclosure under the California Public Records Act (CPRA).

Senate Amendments

Triple joint this bill with AB 847 (Sharp-Collins) and AB 1178 (Pacheco) in order to avoid chaptering issues.

COMMENTS

As passed by the Assembly: This bill prohibited a law enforcement agency from entering into an agreement with the peace officer that requires the agency to destroy a record of a misconduct investigation, or otherwise halt or make particular findings in a misconduct investigation, declares any such agreements void and unenforceable, and specifies that such agreements are subject to disclosure under the California Public Records Act (CPRA).

Major Provisions

- 1) Prohibited an agency employing a peace officer from entering 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; and,
 - c) The agency to otherwise restrict the disclosure of information about an allegation or investigation of misconduct pursuant to any provision of law, including, but not limited to separation of employment records that law enforcement agencies must report to the Commission on Peace Officer Standards and Training (POST), personnel records disclosable under the CPRA, misconduct records required to be maintained in an officer's personnel file and subject to review by a prospective employer, discovery evidence required to be disclosed by the prosecution, and specified records subject to disclosure in decertification investigations and hearings.
- 2) Provided that a provision of an agreement that violates the above prohibition is contrary to law and public policy and is void and unenforceable.
- 3) Specified that such a prohibited agreement constitutes a disclosable peace officer personnel record under the CPRA.

- 4) Provided that the provisions of this bill are severable, and if any provision of this bill or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.
- 5) Made specified findings and declarations.

According to the Author

"Every year, harmful police misconduct goes overlooked and concealed, leaving those affected without justice. Across the state, numerous officers have reached settlements with law enforcement agencies through non-disclosure agreements (NDAs), allowing their misconduct to remain hidden in exchange for a quiet departure. As a direct result, these officers are effectively shielded from accountability, allowing them to continue working in other law enforcement agencies. AB 1388 seeks to end the unjustifiable practice of law enforcement agencies entering into police misconduct nondisclosure agreements (NDAs), ensuring that dangerous and dishonest police officers are held accountable. It also ensures that these NDAs are made readily accessible to the public, prioritizing the safety and well-being of our communities and those they are meant to serve over the protection of officers who departments have already self-identified as problematic."

Arguments in Support

According to *ACLU California Action*, "AB 1388... will end the unjustifiable practice of law enforcement agencies signing police misconduct nondisclosure agreements (NDAs), also known as clean record agreements. Instead of holding unfit officers accountable, these agreements *reward* bad cops and make our communities less safe. AB 1388 will ensure that dishonest and dangerous officers are held accountable by the Commission on Peace Officers Standards and Training (POST), prospective employers, and the public.

"These NDAs obscure egregious, and oftentimes illegal, misconduct.

"Police misconduct nondisclosure agreements (NDAs) have shielded officers who have sexually harassed and assaulted people, embezzled taxpayer dollars, destroyed evidence of sex crimes against minors, and falsified police reports. These officers face no civil liability, criminal charges, or other consequences.

"One terrible example comes from the Burbank Police Department. Internal investigations determined that Officer Lamoureaux repeatedly pressured women to have sex with him in exchange for avoiding arrest or citation. The agency put a veil over this horrendous conduct by allowing Lamoureaux to sign an NDA in exchange for his resignation. Soon after, Lamoureaux began an eight year career as a Title IX officer at several universities – a job that made him responsible for protecting students from sexual harassment and sexual assault. Lamoureaux repeatedly faced complaints from students who stated they did not feel safe talking to him. The immense harm caused by Lamoureaux as a police officer is incalculable, and the unknowable harms he caused as a Title IX administrator were completely preventable.

"Hundreds, perhaps thousands, of California law enforcement officers have had their misconduct veiled by these NDAs.

"The scale of the problem is immense – a recent exposé by the *San Francisco Chronicle* revealed that 163 law enforcement agencies in California had signed NDAs covering hundreds of officers. Yet the true scale of the problem is even larger as two-thirds of the 501 police agencies

investigated refused to produce documents in response to the researcher's public records requests, including the state's ten largest police agencies. One agency who refused to allow the public to know about their NDAs was the state's largest law enforcement agency, the Los Angeles County Sheriff's Department, which has an entire division dedicated to crafting these NDAs. The majority of the identified clean record agreements were established between 2012 and 2022; however, some date as far back as 1995, highlighting the longstanding nature of this practice.

"Police misconduct NDAs disregard victims of police misconduct and endanger public safety.

"These police misconduct NDAs put our communities at risk, preventing police officer misconduct from showing up in future employers' background checks, and allowing police officers who have abused their authority to continue assuming positions of power. Even when dangerous and dishonest officers apply to work for a neighboring law enforcement agency, seek to work with children, or run for public office – these NDAs keep their misconduct shrouded. Nearly a third of the officers identified in the *Chronicle* investigation went on to work as officers at another law enforcement agency, and three were even elected or appointed to public office.⁸ Some police benefit from multiple NDAs over the course of their career. Californians, especially those who have been victimized by police, deserve better.

"Agencies mistakenly believe police misconduct NDAs prohibit them from complying with various transparency laws.

"California law is clear – a contract cannot be contrary to an express provision of law nor can a contract exempt anyone from responsibility for his own fraud, or willful injury to persons or property, or violation of law. Just as clear are the obligations under current transparency laws. For example, Penal Code Section 832.12 requires prospective law enforcement employers to be given access to an applicant's misconduct records; Penal Code Section 13509.5 et seq. requires agencies to report information about serious misconduct and officer separations to POST; and Penal Code Section 832.7(b) & Gov Code Section 7920 et seq. require agencies to produce misconduct investigation documents pursuant to public records requests.

"Despite this, some agencies mistakenly believe that the NDAs prohibit them from reporting bad cops to POST or releasing records of such agreements to the public. Further, some NDAs have led agencies to destroy evidence of the extent of this misconduct or enter an exonerated disciplinary finding, obscuring future employers' ability to identify past misconduct and allowing these officers to protect their reputations at the expense of the public. Moreover, because the overarching purpose of these NDAs is to exempt officers from responsibility for the harms they have caused, the NDAs are void as a matter of public policy....

"AB 1388 puts public safety over the police lobby's self-interest.

"AB 1388 will protect our communities from dangerous and dishonest cops and bring justice to those they have harmed, by:

- 1) Prohibiting law enforcement agencies from signing police misconduct NDAs.
- 2) Voiding the secrecy clauses of hundreds of police misconduct NDAs that currently shield bad cops from scrutiny and accountability.

- 3) Clarifying that members of the public and journalists have access to information about the serious misconduct these NDAs have obscured.
- 4) And emphasizing existing duties for agencies to report to the Commission on Peace Officer Standards and Training (POST) serious misconduct and recent separations."

Arguments in Opposition

According to the *Peace Officers' Research Institute of California*, "AB 1388 is unnecessary, as recent legislation and case law already completely addressed the sponsors' concerns. Moreover, the overbroad scope of the bill will collaterally impair employee labor rights and conflicts with statutory retention provisions. PORAC has offered amendments to codify the supremacy of recent disclosure laws over confidentiality agreements ahead of April 22, 2025, hearing before the Assembly Committee on Public Safety. Those amendments would render PORAC neutral.

"AB 1388 Is Redundant with Existing Law

"Current statutes and judicial precedents already prevent the concealment of police misconduct and ensure transparency:

- 1) Prohibited Destruction of Records: Penal Code Section 832.7(b), as amended by SB 1421 (2018) and SB 16 (2021), mandates preservation and public disclosure of records related to serious misconduct, including investigative reports, findings, and disciplinary records, prohibiting their destruction (Penal Code Section 832.7(b)(3)). This applies even if an officer resigns before an investigation concludes.
- 2) Mandatory Investigation Completion: SB 2 (2021) (Penal Code Section 13510.8(f)) requires agencies to complete investigations of serious misconduct that could lead to suspension or revocation of certification, regardless of an officer's resignation or any settlement agreement, closing any loophole.
- 3) Confidentiality Agreements Subordinate: In *Collondrez v. City of Rio Vista*, 61 Cal. App. 5th 1039, 1051–52 (2021), the court ruled that confidentiality agreements cannot override Section 832.7(b)'s disclosure requirements. Similarly, *Ventura County Deputy Sheriffs' Association v. County of Ventura*, 61 Cal. App. 5th 585, 592 (2021), established that Section 832.7 amendments apply retroactively, ensuring public access to records requested post-amendment, regardless of prior agreements.

"A recent San Francisco Chronicle investigation (February 27, 2025) cited by AB 1388's sponsors relies on pre-SB 1421 cases to highlight "clean-record agreements" that concealed misconduct. However, the Chronicle's ability to obtain these agreements—covering 297 officers across 163 agencies—stems directly from SB 1421 and SB 16, which made such records disclosable under Penal Code Section 832.7(b). This demonstrates that the Legislature has already remedied the issue, as the Chronicle could not have accessed these records or written its article without these reforms.

"Conflict with Statutory Expungement Provisions

"AB 1388's categorical ban on agreements to "destroy, remove, or conceal" records conflicts with Penal Code Section 832.5(b), which permits expungement of certain disciplinary records. Specifically, Penal Code Section 832.5(b) allows complaints and related reports to be removed

from an officer's file after five years if no further complaints arise or if the complaint was not sustained, subject to agency discretion. These retention periods balance transparency interests with employee fairness interests against stale disciplinary permanently impairing careers. Agreements consistent with this statute are necessary to effectuate lawful expungement, which is permissive but not mandatory. By prohibiting such agreements, AB 1388 undermines existing law.

"Proposed Amendment

"To align AB 1388 with existing law, PORAC proposes amending Penal Code Section 832.7(b)(3) to codify *Collondrez*, clarifying that settlement agreements, regardless of confidentiality terms, are subject to disclosure for incidents under Section 832.7(b)(1):

"Records that shall be released pursuant to this subdivision include all investigative reports; photographic, audio, and video evidence; transcripts or recordings of interviews; autopsy reports; all materials compiled and presented for review to the district attorney or to any person or body charged with determining whether to file criminal charges against an officer in connection with an incident, whether the officer's action was consistent with law and agency policy for purposes of discipline or administrative action, or what discipline to impose or corrective action to take; documents setting forth findings or recommended findings; and copies of disciplinary records relating to the incident, including any letters of intent to impose discipline, any documents reflecting modifications of discipline due to the Skelly or grievance process, *including settlement agreements regardless of any confidentiality term*, and letters indicating final imposition of discipline or other documentation reflecting implementation of corrective action. Records that shall be released pursuant to this subdivision also include records relating to an incident specified in paragraph (1) in which the peace officer or custodial officer resigned before the law enforcement agency or oversight agency concluded its investigation into the alleged incident."

"Conclusion

"AB 1388 is unnecessary and targets a problem already solved by the Legislature through SB 1421, SB 16, and SB 2. Tellingly, the motivation for this legislation, the San Francisco Chronicle's investigation, could only access "clean-record agreements" because of the Legislature's changes to Penal Code Section 832.7(b). In readdressing a previous resolved concern with overbroad labor prohibitions, AB 1388 undermines employee rights to enforce Penal Code Section 832.7(a) confidentiality rights and the retention periods in Penal Code Section 832.5(b) through contract. We respectfully request that the Legislature reject AB 1388 unless amended."

FISCAL COMMENTS

According to the Assembly Appropriations Committee:

- 1) Costs (General Fund, special funds) of an unknown but potentially significant amount to state LEAs to disclose confidentiality agreements in response to PRA requests.
- 2) Non-reimbursable costs to local LEAs disclose confidentiality agreements in response to PRA requests. Proposition 42 (2014) requires all local governments to comply with the PRA and eliminated state reimbursement to local agencies for costs of complying with the PRA.

VOTES:**ASM PUBLIC SAFETY: 7-1-1**

YES: Schultz, Alanis, Mark González, Bonta, Harabedian, Lackey, Sharp-Collins

NO: Ramos

ABS, ABST OR NV: Nguyen

ASM APPROPRIATIONS: 11-0-4

YES: Wicks, Arambula, Calderon, Caloza, Elhawary, Fong, Mark González, Hart, Pacheco, Pellerin, Solache

ABS, ABST OR NV: Sanchez, Dixon, Ta, Tangipa

ASSEMBLY FLOOR: 69-0-10

YES: Addis, Aguiar-Curry, Ahrens, Alanis, Alvarez, Arambula, Ávila Farías, 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

ABS, ABST OR NV: Bains, Calderon, Castillo, Chen, Ellis, Hadwick, Ramos, Ransom, Michelle Rodriguez, Blanca Rubio

UPDATED

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CONSULTANT: Ilan Zur / PUB. S. / (916) 319-3744

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