

AMENDED IN SENATE APRIL 2, 2018

SENATE BILL

No. 1421

Introduced by Senator Skinner

*(Coauthors: Senators Mitchell, Bradford, Glazer, Hill, Moorlach,
and Wieckowski)*

(Coauthor: Assembly Member Weber)

February 16, 2018

An act to amend ~~Section 1203.4~~ Sections 832.7 and 832.8 of the Penal Code, relating to ~~criminal procedure~~: *peace officer records*.

LEGISLATIVE COUNSEL'S DIGEST

SB 1421, as amended, Skinner. ~~Criminal procedure: sentencing.~~
Peace officers: release of records.

The California Public Records Act requires a state or local agency, as defined, to make public records available for inspection, subject to certain exceptions. Existing law requires any peace officer or custodial officer personnel records, as defined, and any records maintained by any state or local agency relating to complaints against peace officers and custodial officers, or any information obtained from these records, to be confidential and prohibits the disclosure of those records in any criminal or civil proceeding, except by discovery. Existing law describes exceptions to this requirement for investigations or proceedings concerning the conduct of peace officers or custodial officers, and for an agency or department that employs those officers, conducted by a grand jury, a district attorney's office, or the Attorney General's office.

This bill would require, notwithstanding any other law, certain peace officer or custodial officer personnel records and records relating to specified incidents, complaints, and investigations involving peace officers and custodial officers to be available for public inspection

pursuant to the California Public Records Act. The bill would provide that this information includes, but is not limited to, the framing allegation or complaint, any facts or evidence collected or considered, and any findings or recommended findings, discipline, or corrective action taken. The bill would require records disclosed pursuant to this provision to be redacted only to remove personal data or information, such as a home address, telephone number, or identities of family members, other than the names and work-related information of peace officers and custodial officers, to preserve the anonymity of complainants and witnesses, or to protect confidential medical, financial, or other information in which disclosure would cause an unwarranted invasion of personal privacy that clearly outweighs the strong public interest in records about misconduct by peace officers and custodial officers, or where there is a specific, particularized reason to believe that disclosure would pose a significant danger to the physical safety of the peace officer, custodial officer, or others.

The California Constitution requires local agencies, for the purpose of ensuring public access to the meetings of public bodies and the writings of public officials and agencies, to comply with a statutory enactment that amends or enacts laws relating to public records or open meetings and contains findings demonstrating that the enactment furthers the constitutional requirements relating to this purpose.

This bill would make legislative findings to that effect.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law permits a defendant to withdraw his or her plea of guilty or plea of nolo contendere and enter a plea of not guilty if he or she has fulfilled the conditions of probation for the entire period of probation; has been discharged prior to the termination of the period of probation; has been convicted of a misdemeanor and not granted probation and has fully complied with and performed the sentence of the court, or has been sentenced to a county jail for a felony, or if a court, in its discretion and the interests of justice, determines that a defendant should be granted this or other specified relief. In either case, existing law releases the defendant from all penalties and disabilities resulting from the offense of which he or she has been convicted. Existing law makes this relief~~

~~unavailable if the defendant has committed any one of specified offenses.~~

~~This bill would make technical, nonsubstantive changes to those provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 SECTION 1. *The Legislature finds and declares all of the*
2 *following:*

3 (a) *Peace officers help to provide one of our state’s most*
4 *fundamental government services. To empower peace officers to*
5 *fulfill their mission, the people of California vest them with*
6 *extraordinary authority — the powers to detain, search, arrest,*
7 *and use deadly force. Our society depends on peace officers’*
8 *faithful exercise of that authority. Misuse of that authority can*
9 *lead to grave constitutional violations, harms to liberty and the*
10 *inherent sanctity of human life, as well as significant public unrest.*

11 (b) *The public has a right to know all about serious police*
12 *misconduct, as well as about officer-involved shootings and other*
13 *serious uses of force. Concealing crucial public safety matters*
14 *such as officer violations of civilians’ rights, or inquiries into*
15 *deadly use of force incidents, undercuts the public’s faith in the*
16 *legitimacy of law enforcement, makes it harder for tens of*
17 *thousands of hardworking peace officers to do their jobs, and*
18 *endangers public safety.*

19 SEC. 2. *Section 832.7 of the Penal Code is amended to read:*

20 832.7. (a) ~~Peace officer or custodial officer~~ *Except as provided*
21 *in subdivision (b), the personnel records of peace officers and*
22 *custodial officers and records maintained by any state or local*
23 *agency pursuant to Section 832.5, or information obtained from*
24 *these records, are confidential and shall not be disclosed in any*
25 *criminal or civil proceeding except by discovery pursuant to*
26 *Sections 1043 and 1046 of the Evidence Code. This section shall*
27 *not apply to investigations or proceedings concerning the conduct*
28 *of peace officers or custodial officers, or an agency or department*
29 *that employs those officers, conducted by a grand jury, a district*
30 *attorney’s office, or the Attorney General’s office.*

1 (b) (1) Notwithstanding subdivision (a), subdivision (f) of
2 Section 6254 of the Government Code, or any other law, the
3 following peace officer or custodial officer personnel records and
4 records maintained by any state or local agency shall not be
5 confidential and shall be available for public inspection pursuant
6 to the California Public Records Act (Chapter 3.5 (commencing
7 with Section 6250) of Division 7 of Title 1 of the Government
8 Code):

9 (A) A record relating to the report, investigation, or findings of
10 any of the following:

11 (i) An incident involving the discharge of a firearm at a person
12 by a peace officer or custodial officer.

13 (ii) An incident involving the discharge of an electronic control
14 weapon or conducted energy device at or upon a person by a peace
15 officer or custodial officer.

16 (iii) An incident involving a strike with an impact weapon or
17 projectile to the head or neck of a person by a peace officer or
18 custodial officer.

19 (iv) An incident in which the use of force by a peace officer or
20 custodial officer against a person resulted in death, or in serious
21 bodily injury, as defined in subdivision (f) of Section 243.

22 (B) (i) Any record relating to an incident in which a sustained
23 finding was made by any law enforcement agency or oversight
24 agency that a peace officer or custodial officer engaged in sexual
25 assault involving a member of the public.

26 (ii) As used in this subparagraph, “sexual assault” means the
27 commission or attempted initiation of a sexual act with a member
28 of the public by means of force, threat, coercion, extortion, offer
29 of leniency or other official favor, or under the color of authority.
30 For purposes of this definition, the propositioning for or
31 commission of any sexual act while on duty is considered a sexual
32 assault.

33 (iii) As used in this subparagraph, “member of the public”
34 means any person not employed by the officer’s employing agency
35 and includes any participant in a cadet, explorer, or other youth
36 program affiliated with the agency.

37 (C) Any record relating to an incident in which a sustained
38 finding was made by any law enforcement agency or oversight
39 agency of dishonesty by a peace officer or custodial officer relating
40 to the reporting, investigation, or prosecution of a crime, or

1 relating to the reporting of, or investigation of misconduct by,
2 another peace officer or custodial officer, including, but not limited
3 to, any sustained finding of perjury, false statements, filing false
4 reports, destruction, falsifying, or concealing of evidence, or any
5 other dishonesty that undermines the integrity of the criminal
6 justice system.

7 (2) Records that shall be released pursuant to this subdivision
8 include, but are not limited to, the framing allegations or complaint
9 and any facts or evidence collected or considered, any report of
10 the investigation or analysis of the evidence or the conduct, and
11 any findings or recommended findings, discipline, or corrective
12 action taken.

13 (3) A record from a separate and prior investigation or
14 assessment of a separate incident shall not be released unless it
15 is independently subject to disclosure pursuant to this subdivision.

16 (4) If an investigation or incident involves multiple officers,
17 information about allegations of misconduct by, or the analysis
18 or disposition of an investigation of, an officer shall not be released
19 pursuant to subparagraph (B) or (C) of paragraph (1), unless it
20 relates to a sustained finding against that officer. However, factual
21 information about that action of an officer during an incident, or
22 the statements of an officer about an incident, shall be released if
23 they are relevant to a sustained finding against another officer
24 that is subject to release pursuant to subparagraph (B) or (C) of
25 paragraph (1).

26 (5) An agency shall redact a record disclosed pursuant to this
27 section only for any the following purposes:

28 (A) To remove personal data or information, such as a home
29 address, telephone number, or identities of family members, other
30 than the names and work-related information of peace and
31 custodial officers.

32 (B) To preserve the anonymity of complainants and witnesses.

33 (C) To protect confidential medical, financial, or other
34 information of which disclosure is specifically prohibited by federal
35 law or would cause an unwarranted invasion of personal privacy
36 that clearly outweighs the strong public interest in records about
37 misconduct by peace officers and custodial officers.

38 (D) Where there is a specific, articulable, and particularized
39 reason to believe that disclosure of the record would pose a

1 *significant danger to the physical safety of the peace officer,*
2 *custodial officer, or another person.*

3 *(6) An agency may withhold a record that is disclosable*
4 *pursuant to this subdivision during an investigation into the use*
5 *of force by a peace officer until the investigating agency determines*
6 *whether the use of force violated a law or agency policy and until*
7 *the district attorney determines whether to file criminal charges*
8 *for the use of force. However, in no case may an agency withhold*
9 *that record for longer than 180 days from the date of the use of*
10 *force.*

11 ~~(b)~~
12 ~~(c)~~ Notwithstanding ~~subdivision (a)~~, subdivisions (a) and (b),
13 a department or agency shall release to the complaining party a
14 copy of his or her own statements at the time the complaint is filed.

15 ~~(e)~~
16 ~~(d)~~ Notwithstanding ~~subdivision (a)~~, subdivisions (a) and (b),
17 a department or agency that employs peace or custodial officers
18 may disseminate data regarding the number, type, or disposition
19 of complaints (sustained, not sustained, exonerated, or unfounded)
20 made against its officers if that information is in a form which
21 does not identify the individuals involved.

22 ~~(d)~~
23 ~~(e)~~ Notwithstanding ~~subdivision (a)~~, subdivisions (a) and (b),
24 a department or agency that employs peace or custodial officers
25 may release factual information concerning a disciplinary
26 investigation if the officer who is the subject of the disciplinary
27 investigation, or the officer’s agent or representative, publicly
28 makes a statement he or she knows to be false concerning the
29 investigation or the imposition of disciplinary action. Information
30 may not be disclosed by the peace or custodial officer’s employer
31 unless the false statement was published by an established medium
32 of communication, such as television, radio, or a newspaper.
33 Disclosure of factual information by the employing agency
34 pursuant to this subdivision is limited to facts contained in the
35 officer’s personnel file concerning the disciplinary investigation
36 or imposition of disciplinary action that specifically refute the false
37 statements made public by the peace or custodial officer or his or
38 her agent or representative.

39 ~~(e)~~

1 (f) (1) The department or agency shall provide written
2 notification to the complaining party of the disposition of the
3 complaint within 30 days of the disposition.

4 (2) The notification described in this subdivision shall not be
5 conclusive or binding or admissible as evidence in any separate
6 or subsequent action or proceeding brought before an arbitrator,
7 court, or judge of this state or the United States.

8 ~~(f) Nothing in this section shall~~

9 (g) *This section does not* affect the discovery or disclosure of
10 information contained in a peace or custodial officer's personnel
11 file pursuant to Section 1043 of the Evidence Code.

12 *SEC. 3. Section 832.8 of the Penal Code is amended to read:*

13 832.8. As used in Section 832.7, ~~“personnel records”~~ *the*
14 *following words or phrases have the following meanings:*

15 (a) *“Personnel records”* means any file maintained under that
16 individual's name by his or her employing agency and containing
17 records relating to any of the following:

18 ~~(a)~~

19 (1) Personal data, including marital status, family members,
20 educational and employment history, home addresses, or similar
21 information.

22 ~~(b)~~

23 (2) Medical history.

24 ~~(c)~~

25 (3) Election of employee benefits.

26 ~~(d)~~

27 (4) Employee advancement, appraisal, or discipline.

28 ~~(e)~~

29 (5) Complaints, or investigations of complaints, concerning an
30 event or transaction in which he or she participated, or which he
31 or she perceived, and pertaining to the manner in which he or she
32 performed his or her duties.

33 ~~(f)~~

34 (6) Any other information the disclosure of which would
35 constitute an unwarranted invasion of personal privacy.

36 (b) *“Sustained”* means a final determination by an investigating
37 agency, commission, board, hearing officer, or arbitrator, as
38 applicable, following an investigation and opportunity for an
39 administrative appeal pursuant to Sections 3304 and 3304.5 of

1 *the Government Code, that the actions of the peace officer or*
2 *custodial officer were found to violate law or department policy.*

3 *SEC. 4. The Legislature finds and declares that Section 2 of*
4 *this act, which amends Section 832.7 of the Penal Code, furthers,*
5 *within the meaning of paragraph (7) of subdivision (b) of Section*
6 *3 of Article I of the California Constitution, the purposes of that*
7 *constitutional section as it relates to the right of public access to*
8 *the meetings of local public bodies or the writings of local public*
9 *officials and local agencies. Pursuant to paragraph (7) of*
10 *subdivision (b) of Section 3 of Article I of the California*
11 *Constitution, the Legislature makes the following findings:*

12 *The public has a strong, compelling interest in law enforcement*
13 *transparency because it is essential to having a just and democratic*
14 *society.*

15 *SEC. 5. No reimbursement is required by this act pursuant to*
16 *Section 6 of Article XIII B of the California Constitution because*
17 *the only costs that may be incurred by a local agency or school*
18 *district under this act would result from a legislative mandate that*
19 *is within the scope of paragraph (7) of subdivision (b) of Section*
20 *3 of Article I of the California Constitution.*

21 **SECTION 1.** ~~Section 1203.4 of the Penal Code is amended to~~
22 ~~read:~~

23 ~~1203.4. (a) (1) In any case in which a defendant has fulfilled~~
24 ~~the conditions of probation for the entire period of probation, or~~
25 ~~has been discharged prior to the termination of the period of~~
26 ~~probation, or in any other case in which a court, in its discretion~~
27 ~~and the interests of justice, determines that a defendant should be~~
28 ~~granted the relief available under this section, the defendant shall,~~
29 ~~at any time after the termination of the period of probation, if he~~
30 ~~or she is not then serving a sentence for any offense, on probation~~
31 ~~for any offense, or charged with the commission of any offense,~~
32 ~~be permitted by the court to withdraw his or her guilty or nolo~~
33 ~~contendere plea and enter a plea of not guilty; or, if he or she has~~
34 ~~been convicted after a plea of not guilty, the court shall set aside~~
35 ~~the verdict of guilty; and, in either case, the court shall thereupon~~
36 ~~dismiss the accusations or information against the defendant and~~
37 ~~except as noted below, he or she shall thereafter be released from~~
38 ~~all penalties and disabilities resulting from the offense of which~~
39 ~~he or she has been convicted, except as provided in Section 13555~~
40 ~~of the Vehicle Code. The probationer shall be informed, in his or~~

1 her probation papers, of this right and privilege and his or her right,
 2 if any, to petition for a certificate of rehabilitation and pardon. The
 3 probationer may make the application and change of plea in person
 4 or by attorney, or by the probation officer authorized in writing.
 5 However, in any subsequent prosecution of the defendant for any
 6 other offense, the prior conviction may be pleaded and proved and
 7 shall have the same effect as if probation had not been granted or
 8 the accusation or information dismissed. The order shall state, and
 9 the probationer shall be informed, that the order does not relieve
 10 him or her of the obligation to disclose the conviction in response
 11 to any direct question contained in any questionnaire or application
 12 for public office, for licensure by any state or local agency, or for
 13 contracting with the California State Lottery Commission.

14 (2) Dismissal of an accusation or information pursuant to this
 15 section does not permit a person to own, possess, or have in his or
 16 her custody or control any firearm or prevent his or her conviction
 17 under Chapter 2 (commencing with Section 29800) of Division 9
 18 of Title 4 of Part 6.

19 (3) Dismissal of an accusation or information underlying a
 20 conviction pursuant to this section does not permit a person
 21 prohibited from holding public office as a result of that conviction
 22 to hold public office.

23 (4) This subdivision shall apply to all applications for relief
 24 under this section which are filed on or after November 23, 1970.

25 (b) Subdivision (a) of this section does not apply to any
 26 misdemeanor that is within the provisions of Section 42002.1 of
 27 the Vehicle Code, to any violation of subdivision (c) of Section
 28 286, Section 288, subdivision (c) of Section 288a, Section 288.5,
 29 subdivision (j) of Section 289, Section 311.1, 311.2, 311.3, or
 30 311.11, or any felony conviction pursuant to subdivision (d) of
 31 Section 261.5, or to any infraction.

32 (e) (1) Except as provided in paragraph (2), subdivision (a)
 33 does not apply to a person who receives a notice to appear or is
 34 otherwise charged with a violation of an offense described in
 35 subdivisions (a) to (e), inclusive, of Section 12810 of the Vehicle
 36 Code.

37 (2) If a defendant who was convicted of a violation listed in
 38 paragraph (1) petitions the court, the court in its discretion and in
 39 the interests of justice, may order the relief provided pursuant to
 40 subdivision (a) to that defendant.

1 ~~(d) A person who petitions for a change of plea or setting aside~~
2 ~~of a verdict under this section may be required to reimburse the~~
3 ~~court for the actual costs of services rendered, whether or not the~~
4 ~~petition is granted and the records are sealed or expunged, at a rate~~
5 ~~to be determined by the court not to exceed one hundred fifty~~
6 ~~dollars (\$150), and to reimburse the county for the actual costs of~~
7 ~~services rendered, whether or not the petition is granted and the~~
8 ~~records are sealed or expunged, at a rate to be determined by the~~
9 ~~county board of supervisors not to exceed one hundred fifty dollars~~
10 ~~(\$150), and to reimburse any city for the actual costs of services~~
11 ~~rendered, whether or not the petition is granted and the records are~~
12 ~~sealed or expunged, at a rate to be determined by the city council~~
13 ~~not to exceed one hundred fifty dollars (\$150). Ability to make~~
14 ~~this reimbursement shall be determined by the court using the~~
15 ~~standards set forth in paragraph (2) of subdivision (g) of Section~~
16 ~~987.8 and shall not be a prerequisite to a person's eligibility under~~
17 ~~this section. The court may order reimbursement in any case in~~
18 ~~which the petitioner appears to have the ability to pay, without~~
19 ~~undue hardship, all or any portion of the costs for services~~
20 ~~established pursuant to this subdivision.~~

21 ~~(e) (1) Relief shall not be granted under this section unless the~~
22 ~~prosecuting attorney has been given 15 days' notice of the petition~~
23 ~~for relief. The probation officer shall notify the prosecuting attorney~~
24 ~~when a petition is filed, pursuant to this section.~~

25 ~~(2) It shall be presumed that the prosecuting attorney has~~
26 ~~received notice if proof of service is filed with the court.~~

27 ~~(f) If, after receiving notice pursuant to subdivision (e), the~~
28 ~~prosecuting attorney fails to appear and object to a petition for~~
29 ~~dismissal, the prosecuting attorney may not move to set aside or~~
30 ~~otherwise appeal the grant of that petition.~~

31 ~~(g) Notwithstanding the above provisions or any other provision~~
32 ~~of law, the Governor shall have the right to pardon a person~~
33 ~~convicted of a violation of subdivision (e) of Section 286, Section~~
34 ~~288, subdivision (e) of Section 288a, Section 288.5, or subdivision~~
35 ~~(j) of Section 289, if there are extraordinary circumstances.~~