

File No. 160258

Committee Item No. _____

Board Item No. 28

COMMITTEE/BOARD OF SUPERVISORS

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Committee: _____

Date: _____

Board of Supervisors Meeting

Date: April 12, 2016

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OTHER

- California State Bill 1286
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Prepared by: Brent Jalipa

Date: March 17, 2016

Prepared by: _____

Date: _____

1 [Supporting California State Senate Bill 1286 (Leno) - Increasing Law Enforcement
2 Transparency]

3 **Resolution supporting California State Senate Bill 1286, authored by Senator Mark**
4 **Leno, improving government transparency and accountability by allowing the public to**
5 **access information on police misconduct and use of force.**

6
7 WHEREAS, Police departments and law enforcement agencies across America have
8 for years, closely guarded information relating to misconduct, use of force, and stop data; and

9 WHEREAS, To increase accountability, improve public trust of law enforcement and
10 promote informed participation by the public, specific data must be accessible to the public
11 and available online in an open format; and

12 WHEREAS, Polling data shows that nearly 80 percent of Californians believe the public
13 should have access to the findings of police misconduct; and

14 WHEREAS, Many states including Texas, Kentucky, Utah, and several others, already
15 make police misconduct information available to the public when an allegation of misconduct
16 has been confirmed; and

17 WHEREAS, At least ten other states, including Florida, Ohio, and Washington, also
18 make these same records public regardless of whether an incident of misconduct has been
19 confirmed; and

20 WHEREAS, In February, California Senate Bill (SB) 1286, introduced by Senator Mark
21 Leno would improve transparency, accountability, and trust between law enforcement and the
22 public; and

23 WHEREAS, SB 1286 would allow greater public access to peace officer records
24 related to serious uses of force and sustained charges of misconduct; and
25

1 WHEREAS, SB 1286 also gives residents who file complaints alleging misconduct
2 access to information related to those complaints; and

3 WHEREAS, SB 1286 would allow local governments to determine whether public
4 hearings and administrative appeals should be held on allegations of peace officer
5 misconduct; and

6 WHEREAS, The San Francisco Board of Supervisors have already taken action locally
7 to create more transparency into law enforcement by unanimously passing the transparent
8 policing and data collection ordinance in September, 2015 and moving a ballot measure
9 forward to the voters requiring independent investigations into all officer involved shootings in
10 March, 2016; and

11 WHEREAS, SB 1286 aims to balance the needs of public disclosure and individual
12 privacy by allowing courts to withhold records if there is a risk or danger to an officer or
13 another person; now, therefore, be it

14 RESOLVED, The San Francisco Board of Supervisors commends Senator Mark Leno
15 for his leadership and efforts to create enhanced transparency into our law enforcement
16 agencies; and, be it

17 FURTHER RESOLVED, That the San Francisco Board of Supervisors declares their
18 support for SB 1286, and urges the Senate and Assembly to pass this bill; and, be it

19 FURTHER RESOLVED, That the San Francisco Board of Supervisors hereby directs
20 the Clerk of the Board to transmit copies of this resolution to Senator Mark Leno with a
21 request to take all actions necessary to achieve the objectives of SB 1286.

22
23
24
25



California
LEGISLATIVE INFORMATION

SB-1286 Peace officers: records of misconduct. (2015-2016)

CALIFORNIA LEGISLATURE— 2015-2016 REGULAR SESSION

SENATE BILL

No. 1286

Introduced by Senator Leno

February 19, 2016

An act to amend Sections 1043 and 1045 of the Evidence Code, to amend Section 3304.5 of the Government Code, and to amend Sections 832.5 and 832.7 of the Penal Code, relating to peace officers.

LEGISLATIVE COUNSEL'S DIGEST

SB 1286, as introduced, Leno. Peace officers: records of misconduct.

(1) The Public Safety Officers Procedural Bill of Rights Act provides a set of rights and procedural protections to specified public safety officers. That act requires an administrative appeal instituted by a public agency under the act to be conducted in conformance with rules and procedures adopted by the local public agency. Existing law also establishes the Administrative Procedure Act, and requires enumerated state agencies to hold hearings under that act that are conducted by administrative law judges.

This bill would, notwithstanding any confidentiality afforded the personnel records of peace officers or custodial officers, authorize a municipality or local public agency that employs peace officers or custodial officers to hear and adjudicate administrative appeals, or to empower a body to hear and adjudicate those appeals, in proceedings that are open to the public and in which some or all documents filed are available for public inspection.

(2) Existing law requires a department or agency that employs peace officers to establish a procedure to investigate complaints by members of the public against those officers. Existing law authorizes a department or agency that employs custodial officers to establish a similar procedure for its officers. Existing law establishes retention requirements and access privileges, as specified, for those complaints and related reports or findings. Existing law requires the department or agency to provide written notification to the complaining party of the disposition of a complaint made pursuant to those provisions within 30 days of the disposition.

This bill would require that notification to include, at a minimum, the charges framed in response to the complaint, the agency's disposition with respect to each of those charges, any factual findings on which the agency based its dispositions, and any discipline imposed or corrective action taken. By increasing the duties of local officials, the bill would impose a state-mandated local program.

(3) 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 provides that peace officer or custodial officer personnel records, as defined, and records maintained by any state or local agency relating to complaints against peace officers and custodial officers, or information obtained from these records, are confidential and prohibits the disclosure of those records in any criminal or civil proceeding except by discovery. Existing law describes exceptions to this policy for 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, or the Attorney General's office.

This bill would expand the scope of the exceptions to apply to, among other things, investigations or proceedings conducted by civilian review agencies, inspectors general, personnel boards, police commissions, civil service commissions, city councils, boards of supervisors, or any entities empowered to investigate peace officer misconduct on behalf of an agency, conduct audits of peace officer discipline on behalf of an agency, adjudicate complaints against peace officers or custodial officers, hear administrative appeals, or set policies or funding for the law enforcement agency. The bill would also require an entity described in those exceptions to comply with specified confidentiality provisions.

This bill would require, notwithstanding any other law, certain peace officer or custodial officer personnel records and records relating to complaints against 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, the agency's full investigation file, any evidence gathered, 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.

(4) Existing law establishes discovery procedures for obtaining peace officer and custodial officer personnel files and files relating to complaints against peace officers and custodial officers.

This bill would specify that those provisions do not bar or limit access in any proceeding to peace officer or custodial officer personnel records or records relating to complaints against peace officers and custodial officers, and would provide that those provisions do not require a party to a proceeding pending in a court or administrative agency to seek records through alternate means before filing a motion pursuant to the discovery provisions described above.

(5) 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.

(6) 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 with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

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

(a) Peace officers help provide one of our state's most fundamental government services — keeping our communities safe. These working men and women risk their lives daily in order to protect the people of California. The public greatly appreciates peace officers' hard work and dedication to public safety. The good names of these public servants should not be tarnished by the actions of those amongst their ranks who may engage in wrongdoing.

(b) To empower peace officers to fulfill their mission, the people of California vest them with extraordinary authority — the powers to detain, search, arrest, and use deadly force. Our society depends on peace officers' faithful exercise of that authority. Its misuse can lead to grave constitutional violations, harms to liberty, and the inherent sanctity of human life, as well as significant public unrest.

(c) Concealing crucial public safety matters such as officer violations of civilians' rights, or inquiries into deadly use of force incidents, undercuts the public's faith in the legitimacy of law enforcement, makes it harder for tens of thousands of hardworking peace officers to do their jobs, and endangers public safety.

(d) The public has a strong, compelling interest in law enforcement transparency because it is essential to having a just and democratic society.

SEC. 2. Section 1043 of the Evidence Code is amended to read:

1043. (a) ~~In any case in which~~ If discovery or disclosure is sought of peace officer or custodial officer personnel records or records maintained pursuant to Section 832.5 of the Penal Code *and for which that section or Section 832.7 of the Penal Code bar or limit disclosure*, or information from those records, the party seeking the discovery or disclosure shall file a written motion with the appropriate court or administrative body upon written notice to the governmental agency ~~which~~ that has custody and control of the records. The written notice shall be given at the times prescribed by subdivision (b) of Section 1005 of the Code of Civil Procedure. Upon receipt of the notice the governmental agency served shall immediately notify the individual whose records are sought.

(b) The motion shall include all of the following:

(1) Identification of the proceeding in which discovery or disclosure is sought, the party seeking discovery or disclosure, the peace officer or custodial officer whose records are sought, the governmental agency ~~which~~ that has custody and control of the records, and the time and place at which the motion for discovery or disclosure shall be heard.

(2) A description of the type of records or information sought.

(3) Affidavits showing good cause for the discovery or disclosure sought, setting forth the materiality thereof to the subject matter involved in the pending litigation and stating upon reasonable belief that the governmental agency identified has the records or information from the records.

(c) ~~No~~ A hearing upon a motion for discovery or disclosure shall *not* be held without full compliance with the notice provisions of this section except upon a showing by the moving party of good cause for noncompliance, or upon a waiver of the hearing by the governmental agency identified as having the records.

(d) A party to a proceeding pending in a court or administrative agency is not required to seek records through alternate means before filing a motion pursuant to this section.

SEC. 3. Section 1045 of the Evidence Code is amended to read:

1045. (a) ~~Nothing in this article shall be construed to~~ This article does not affect the right of access to records of complaints, or investigations of complaints, or discipline imposed as a result of those investigations, concerning an event or transaction in which the peace officer or custodial officer, as defined in Section 831.5 of the Penal Code, participated, or which he or she perceived, and pertaining to the manner in which he or she performed his or her duties, provided that information is relevant to the subject matter involved in the pending litigation.

(b) In determining relevance, the court shall examine the information in chambers in conformity with Section 915, and shall exclude *all of the following* from disclosure:

(1) Information consisting of complaints concerning conduct occurring more than five years before the event or

transaction that is the subject of the litigation in aid of which discovery or disclosure is sought.

(2) In any criminal proceeding the conclusions of any officer investigating a complaint filed pursuant to Section 832.5 of the Penal Code.

(3) Facts sought to be disclosed that are so remote as to make disclosure of little or no practical benefit.

(c) In determining relevance where the issue in litigation concerns the policies or pattern of conduct of the employing agency, the court shall consider whether the information sought may be obtained from other records maintained by the employing agency in the regular course of agency business ~~which that~~ would not necessitate the disclosure of individual personnel records.

(d) Upon motion seasonably made by the governmental agency ~~which that~~ has custody or control of the records to be examined or by the officer whose records are sought, and upon good cause showing the necessity thereof, the court may make any order ~~which that~~ justice requires to protect the officer or agency from unnecessary annoyance, ~~embarrassment~~ *embarrassment*, or oppression.

(e) The court shall, in any case or proceeding permitting the disclosure or discovery of any peace officer or custodial officer records requested pursuant to Section 1043, order that the records disclosed or discovered may not be used for any purpose other than a court proceeding pursuant to applicable law.

(f) This article does not bar or limit access in any proceeding to peace officer or custodial officer personnel records or records maintained pursuant to Section 832.5 of the Penal Code for which Sections 832.5 or 832.7 of the Penal Code do not prohibit disclosure.

SEC. 4. Section 3304.5 of the Government Code is amended to read:

3304.5. (a) An administrative appeal instituted by a public safety officer under this chapter shall be conducted in conformance with rules and procedures adopted by the local public agency.

(b) Notwithstanding any confidentiality given to the personnel records of peace officers or custodial officers under this chapter or under the provisions governing regulation of peace officers contained in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, a municipality or local public agency that employs peace officers may hear and adjudicate an administrative appeal under this chapter, or the municipality or local public agency may empower a body to hear and adjudicate those appeals, in proceedings that are open to the public and in which some or all documents filed are available for public inspection.

SEC. 5. Section 832.5 of the Penal Code is amended to read:

832.5. (a) (1) ~~Each~~ A 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.

(2) ~~Each~~ A department or agency that employs custodial officers, as defined in Section 831.5, 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 the provisions of this section and with the provisions of Section 832.7.

(b) Complaints and any reports or findings relating to these complaints shall be retained for a period of at least five years. All complaints retained pursuant to this subdivision may be maintained either in the peace officer's or custodial officer's general personnel file or in a separate file designated by the department or agency as provided by department or agency policy, in accordance with all applicable requirements of law. However, prior to any official determination regarding promotion, transfer, or disciplinary action by an officer's employing department or agency, the complaints described by subdivision (c) shall be removed from the officer's general personnel file and placed in separate file designated by the department or agency, in accordance with all applicable requirements of law.

(c) Complaints by members of the public that are determined by the peace officer's or custodial officer's employing agency to be frivolous, as defined in Section 128.5 of the Code of Civil Procedure, or unfounded or exonerated, or any portion of a complaint that is determined to be frivolous, unfounded, or exonerated, shall not be maintained in that officer's general personnel file. However, these complaints shall be retained in other, separate files that shall be deemed personnel records for purposes of the California Public Records Act (Chapter

3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and Section 1043 of the Evidence Code.

(1) Management of the peace officer's or custodial officer's employing agency shall have access to the files described in this subdivision.

(2) Management of the peace officer's or custodial officer's employing agency shall not use the complaints contained in these separate files for punitive or promotional purposes except as permitted by subdivision (f) of Section 3304 of the Government Code.

(3) Management of the peace officer's or custodial officer's employing agency may identify any officer who is subject to the complaints maintained in these files which that require counseling or additional training. However, if a complaint is removed from the officer's personnel file, any reference in the personnel file to the complaint or to a separate file shall be deleted.

(d) As used in this section, section and Section 832.7, the following definitions apply:

(1) ~~"General"~~ *"Exonerated"* means that the investigation clearly established that the actions of the peace officer or custodial officer that formed the basis for the complaint are not violations of law or department policy.

(2) *"General personnel file"* means the file maintained by the agency containing the primary records specific to each peace officer's or custodial officer's employment, including evaluations, assignments, status changes, and imposed discipline.

(3) *"Sustained"* means that the investigation disclosed sufficient evidence to prove, by a preponderance of evidence, the truth of the allegation in the complaint or that the actions of the peace officer or custodial officer violated law or department policy.

~~(2)~~

(4) *"Unfounded"* means that the investigation clearly established that the allegation is not true.

~~(3) "Exonerated" means that the investigation clearly established that the actions of the peace or custodial officer that formed the basis for the complaint are not violations of law or department policy.~~

(e) (1) A municipality, county, or agency that employs peace officers may do both of the following:

(A) Hold hearings to hear complaints by members of the public, consider evidence, and adjudicate the complaints or recommend adjudications.

(B) Establish a body to hold the hearings described in subparagraph (A).

(2) Notwithstanding any confidentiality given to the general personnel file or other personnel records of peace officers or custodial officers, the hearings described in paragraph (1) may be open to the public.

SEC. 6. Section 832.7 of the Penal Code is amended to read:

832.7. (a) ~~Peace~~ *Except as set forth in subdivision (c), peace officer or custodial officer personnel records and records maintained by any state or local agency pursuant to Section 832.5, or information obtained from these records, are confidential and shall not be disclosed in any criminal or civil proceeding except by discovery pursuant to Sections 1043 and 1046 of the Evidence Code.* ~~This~~

(b) (1) *This section shall 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, or the Attorney General's office, civilian review agencies, inspectors general, personnel boards, police commissions, civil service commissions, city councils, boards of supervisors, or any entities empowered to investigate peace officer misconduct on behalf of an agency, conduct audits of peace officer discipline on behalf of an agency, adjudicate complaints against peace officers or custodial officers, hear administrative appeals pursuant to Section 3304.5 of the Government Code, or set policies or funding for the law enforcement agency.*

(2) *An entity allowed access to the personnel and complaint records of peace officers or custodial officers under this subdivision shall comply with the confidentiality provisions of this section.*

(c) (1) Notwithstanding any other law, all of the following peace officer or custodial officer personnel records and records maintained by any state or local agency pursuant to Section 832.5 shall be available for public inspection pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code):

(A) A record related to the investigation or assessment of any use of force by a peace officer that is likely to or does cause death or serious bodily injury, including but not limited to, the discharge of a firearm, use of an electronic control weapon or conducted energy device, and any strike with an impact weapon to a person's head.

(B) A record related to any finding by a law enforcement agency or oversight agency that a peace officer or custodial officer engaged in sexual assault, an excessive use of force, an unjustified search, detention or arrest, racial or identity profiling, as defined in subdivision (e) of Section 13519.4, discrimination or unequal treatment on the basis of race, color, ethnicity, national origin, age, religion, gender identity or expression, sexual orientation, or mental or physical disability, or any other violation of the legal rights of a member of the public.

(C) A record related to any finding by a law enforcement agency of job-related dishonesty by a peace officer or custodial officer, including, but not limited to, perjury, false statements, filing false reports, or destruction or concealment of evidence.

(2) Records that shall be released pursuant to this subdivision include, but are not limited to, the framing allegation or complaint, the agency's full investigation file, any evidence gathered, and any findings or recommended findings, discipline, or corrective action taken.

(3) A record disclosed pursuant to this section shall 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 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 of the record would pose a significant danger to the physical safety of the peace officer, custodial officer, or others.

(b)

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

(e)

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

(d)

(f) Notwithstanding ~~subdivision (a)~~, subdivisions (a) and (c), a department or agency that employs peace officers or custodial officers may release factual information concerning a disciplinary investigation if the officer who is the subject of the disciplinary investigation, or the officer's agent or representative, publicly makes a statement he or she knows to be false concerning the investigation or the imposition of disciplinary action. Information may not be disclosed by the peace officer's or custodial officer's employer unless the false statement was published by an established medium of communication, such as television, radio, or a newspaper. Disclosure of factual information by the employing agency pursuant to this subdivision is limited to facts contained in the officer's personnel file concerning the disciplinary investigation or imposition of disciplinary action that specifically refute the false statements made public by the peace officer or custodial officer or his or her agent or representative.

(e)

(g) (1) The department or agency shall provide written notification to the complaining party of the disposition of the complaint within 30 days of the disposition. The notification shall include, at a minimum, the charges

framed in response to the complaint, the agency's disposition with respect to each of those charges, any factual findings on which the agency based its dispositions, and any discipline imposed or corrective action taken.

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

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

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

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

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

SEC. 8. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a legislative mandate that is within the scope of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

Print Form

Introduction Form

By a Member of the Board of Supervisors or the Mayor

Time stamp
or meeting date _____

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion, or Charter Amendment)
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning "Supervisor [] inquires"
- 5. City Attorney request.
- 6. Call File No. [] from Committee.
- 7. Budget Analyst request (attach written motion).
- 8. Substitute Legislation File No. []
- 9. Reactivate File No. []
- 10. Question(s) submitted for Mayoral Appearance before the BOS on []

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission Youth Commission Ethics Commission
- Planning Commission Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use a Imperative Form.

Sponsor(s):

Cohen; Breed, Kim, Avalos, Peskin, Mar

Subject:

[]

The text is listed below or attached:

Supporting California Senate Bill 1286- Increasing Law Enforcement Transparency

Signature of Sponsoring Supervisor: *Melissa Cohen*

For Clerk's Use Only:

