

Meeting Date: 02/11/2019

Report Type: Discussion



**Sacramento
Community Police
Review Commission
Report**

**915 I Street, 1st Floor
www.CityofSacramento.org**

Title: Presentation on Senate Bill 1421 Law Enactment

Location: Citywide

Recommendation: Receive and File

Contact: Sean Riordan, Senior Staff Attorney, (916) 620-9705, American Civil Liberties Union Foundation of Northern California

Presenter: Sean Riordan, Senior Staff Attorney, (916) 620-9705, American Civil Liberties Union Foundation of Northern California

Department: American Civil Liberties Union Foundation of Northern California

Attachments:

1 – ACLU Presentation

Description/Analysis

Issue Detail: The Commission Chair requested an outside agency to provide a briefing on the implementation of Senate Bill 1421. The Chair invited a representative of the American Civil Liberties Union Foundation of Northern California to provide a presentation.

Policy Considerations: None.

Economic Impacts: None.

Environmental Considerations: None.

Sustainability: None.

Commission/Committee Action: None

Rationale for Recommendation: None

Financial Considerations: None

Local Business Enterprise (LBE): Not applicable

S.B. 1421 and Access to Police Misconduct Records

February 11, 2019

Sean Riordan, ACLU Foundation of Northern California
sriordan@aclunc.org

S.B. 1421 Overview

Amended Cal. Penal Code 832.7

Section 832.7(a) establishes general rule that “the personnel records of peace officers and custodial officers ... are confidential and shall not be disclosed in any criminal or civil proceeding except by discovery pursuant to” the Evidence Code.

S.B. 1421 Overview

Amended Cal. Penal Code 832.7

S.B. 1421 created **Section 832.7(b)** exceptions to general rule, authorizing disclosure under the California Public Records Act of a range of documents related to misconduct.

S.B. 1421 Overview

Legislative Purpose of “Right to Know Act”: Restoring Trust

“[C]oncealing 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.” S.B. 1421, § 1(b).

S.B. 1421 Overview

Section 832.7(b)(1) Disclosures

“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 in which the **use of force** by a peace officer or custodial officer against a person resulted in **death**, or in **great bodily injury**.”

S.B. 1421 Overview

Section 832.7(b)(1) Disclosures

“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.”

S.B. 1421 Overview

Section 832.7(b)(1) Disclosures

“Any record relating to an incident in which a **sustained finding** was made by any law enforcement agency or oversight agency of **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 sustained finding of perjury, false statements, filing false reports, destruction, falsifying, or concealing of evidence.”

S.B. 1421 Overview

Scope of Records to be Disclosed – Section 832.7(b)(2)

“[A]ll 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, or 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, and letters indicating final imposition of discipline or other documentation reflecting implementation of corrective action.”

S.B. 1421 Overview

Temporal Scope

By law, departments must maintain records of complaints for five years. Section 832.5.

Beyond that, departments have varied policies on retention of personnel documents.

Relationship to *Pitchess*

Pitchess v. Superior Court (1974)

Standard for discovery of police personnel records in a criminal case.

1. Defendant couldn't "readily obtain" the information through their own efforts;
2. Defendant's need for the requested evidence balanced against the need to maintain its secrecy in the best interests of the public on the basis of the "official information" privilege (Evidence Code § 1040).

Relationship to *Pitchess*

Section 832.7(h)

“This section does not supersede or affect the criminal discovery process outlined in Chapter 10 (commencing with Section 1054) of Title 6 of Part 2, or the admissibility of personnel records pursuant to subdivision (a), which codifies the court decision in *Pitchess v. Superior Court* (1974) 11 Cal.3d 531.”

Litigation Over S.B. 1421

Law Enforcement Unions are Suing to Block Release of Records

- ❖ They argue that
 - ❖ law is not “retroactive,” i.e., that it doesn’t apply to information created before January 1, 2019; and,
 - ❖ officers relied on privacy of personnel records.
- ❖ ACLU and media organizations are intervening in these lawsuits.
- ❖ Our argument is that law applies to existing records and that any officers’ privacy right has always been limited.
- ❖ In some cases, ACLU intervening on behalf of family members of people killed by law enforcement who filed PRA requests under S.B. 1421.

Litigation Over S.B. 1421

Media Organizations are Suing for Release of Records

- ❖ Doing this in jurisdictions where agency is refusing to release records because of “retroactivity” concerns.
- ❖ Example: Sacramento Sheriff’s Department.
- ❖ Being sued by Sacramento Bee and L.A. Times.