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**AB-1600 Discovery: personnel records: peace officers and custodial officers.** (2019-2020)

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**Assembly Bill No. 1600**

**CHAPTER 585**

An act to amend Section 1005 of the Code of Civil Procedure, and to amend Sections 1043 and 1047 of the Evidence Code, relating to discovery.

[ Approved by Governor October 08, 2019. Filed with Secretary of State October 08, 2019. ]

**LEGISLATIVE COUNSEL'S DIGEST**

AB 1600, Kalra. Discovery: personnel records: peace officers and custodial officers.

(1) Existing law provides discovery procedures for peace or custodial officer personnel records, and other records pertaining to peace or custodial officers, as specified. Existing law requires the party seeking the discovery or disclosure to file a written motion with the appropriate court or administrative body upon written notice to the governmental agency that has custody and control of the records according to times prescribed under other provisions of law.

This bill would limit the written notice requirement with respect to motions pertaining to the discovery of peace or custodial officer personnel records to civil actions. The bill would prescribe an accelerated timeframe for requesting peace or custodial officer personnel records in criminal actions. The bill would require written notice to be served and filed at least 10 court days before the appointed hearing, all papers opposing a motion to be filed with the court at least 5 court days before the hearing, and all reply papers to be filed at least 2 court days before the hearing. The bill would also require proof of service of the notice to be filed no later than 5 court days before the hearing.

(2) Existing law prohibits the disclosure of records of peace officers or custodial officers, including supervisory officers, who either were not present during an arrest or had no contact with the party seeking disclosure from the time of the arrest until the time of booking, or who were not present at the time the conduct at issue is alleged to have occurred within a jail facility.

This bill would create an exception to the above prohibition by permitting the disclosure of records of a supervisory officer if the supervisory officer issued command directives or had command influence over the circumstances at issue and had direct oversight of a peace officer or a custodial officer who was present during the arrest, had contact with the party seeking disclosure from the time of the arrest until the time of booking, or was present at the time the conduct at issue is alleged to have occurred within a jail facility.

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

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

**SECTION 1.** Section 1005 of the Code of Civil Procedure is amended to read:

**1005.** (a) Written notice shall be given, as prescribed in subdivisions (b) and (c), for the following motions:

- (1) Notice of Application and Hearing for Writ of Attachment under Section 484.040.
- (2) Notice of Application and Hearing for Claim and Delivery under Section 512.030.
- (3) Notice of Hearing for Claim of Exemption under Section 706.105.
- (4) Motion to Quash Summons pursuant to subdivision (b) of Section 418.10.
- (5) Motion for Determination of Good Faith Settlement pursuant to Section 877.6.
- (6) Hearing for Discovery of Peace Officer Personnel Records in a civil action pursuant to Section 1043 of the Evidence Code.
- (7) Notice of Hearing of Third-Party Claim pursuant to Section 720.320.
- (8) Motion for an Order to Attend Deposition more than 150 miles from deponent's residence pursuant to Section 2025.260.
- (9) Notice of Hearing of Application for Relief pursuant to Section 946.6 of the Government Code.
- (10) Motion to Set Aside Default or Default Judgment and for Leave to Defend Actions pursuant to Section 473.5.
- (11) Motion to Expunge Notice of Pendency of Action pursuant to Section 405.30.
- (12) Motion to Set Aside Default and for Leave to Amend pursuant to Section 585.5.
- (13) Any other proceeding under this code in which notice is required, and no other time or method is prescribed by law or by court or judge.

(b) Unless otherwise ordered or specifically provided by law, all moving and supporting papers shall be served and filed at least 16 court days before the hearing. The moving and supporting papers served shall be a copy of the papers filed or to be filed with the court. However, if the notice is served by mail, the required 16-day period of notice before the hearing shall be increased by five calendar days if the place of mailing and the place of address are within the State of California, 10 calendar days if either the place of mailing or the place of address is outside the State of California but within the United States, and 20 calendar days if either the place of mailing or the place of address is outside the United States, and if the notice is served by facsimile transmission, express mail, or another method of delivery providing for overnight delivery, the required 16-day period of notice before the hearing shall be increased by two calendar days. Section 1013, which extends the time within which a right may be exercised or an act may be done, does not apply to a notice of motion, papers opposing a motion, or reply papers governed by this section. All papers opposing a motion so noticed shall be filed with the court and a copy served on each party at least nine court days, and all reply papers at least five court days before the hearing.

The court, or a judge thereof, may prescribe a shorter time.

(c) Notwithstanding any other provision of this section, all papers opposing a motion and all reply papers shall be served by personal delivery, facsimile transmission, express mail, or other means consistent with Sections 1010, 1011, 1012, and 1013, and reasonably calculated to ensure delivery to the other party or parties not later than the close of the next business day after the time the opposing papers or reply papers, as applicable, are filed. This subdivision applies to the service of opposition and reply papers regarding motions for summary judgment or summary adjudication, in addition to the motions listed in subdivision (a).

The court, or a judge thereof, may prescribe a shorter time.

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

**1043.** (a) In any case in which discovery or disclosure is sought of peace or custodial officer personnel records or records maintained pursuant to Section 832.5 of the Penal Code 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 that has custody and control of the records, as follows:

- (1) In a civil action, the written notice shall be given at the times prescribed by subdivision (b) of Section 1005 of the Code of Civil Procedure.
- (2) In a criminal action, the written notice shall be served and filed at least 10 court days before the hearing. All papers opposing a motion so noticed shall be filed with the court at least five court days, and all reply papers at least two court days, before the hearing. Proof of service of the notice shall be filed no later than five court days before the hearing.

(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 or custodial officer whose records are sought, the governmental agency 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) Upon receipt of a notice served pursuant to subdivision (a), the governmental agency shall immediately notify the individual whose records are sought.

(d) No hearing upon a motion for discovery or disclosure shall 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.

**SEC. 3.** Section 1047 of the Evidence Code is amended to read:

**1047.** (a) Records of peace officers or custodial officers, as defined in Section 831.5 of the Penal Code, including supervisory officers, who either were not present during the arrest or had no contact with the party seeking disclosure from the time of the arrest until the time of booking, or who were not present at the time the conduct at issue is alleged to have occurred within a jail facility, shall not be subject to disclosure.

(b) Notwithstanding subdivision (a), if a supervisory officer whose records are being sought had direct oversight of a peace officer or a custodial officer, as defined in Section 831.5 of the Penal Code and issued command directives or had command influence over the circumstances at issue, the supervisory officer's records shall be subject to disclosure pursuant to Section 1045 if the peace officer or custodial officer under supervision was present during the arrest, had contact with the party seeking disclosure from the time of the arrest until the time of booking, or was present at the time the conduct at issue is alleged to have occurred within a jail facility.