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SB-1220 Peace and custodial officers. (2019-2020)

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ENROLLED SEPTEMBER 02, 2020
PASSED IN SENATE AUGUST 31, 2020
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AMENDED IN ASSEMBLY AUGUST 26, 2020
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AMENDED IN SENATE JUNE 18, 2020
AMENDED IN SENATE APRIL 29, 2020
AMENDED IN SENATE MARCH 25, 2020

CALIFORNIA LEGISLATURE— 2019–2020 REGULAR SESSION

SENATE BILL

NO. 1220

Introduced by Senator Umberg

February 20, 2020

An act to amend Section 1045 of the Evidence Code, and to add Section 832.11 to the Penal Code, relating to peace officers.

LEGISLATIVE COUNSEL'S DIGEST

SB 1220, Umberg. Peace and custodial officers.

Existing law requires each department or agency in this state that employs peace officers to establish a procedure to investigate complaints by members of the public against the personnel of these departments or agencies, and to make a written description of the procedure available to the public. Existing law generally makes the personnel records of peace officers and custodial officers and records maintained by a state or local agency pursuant to these requirements, or information obtained from these records, confidential and exempt from disclosure in a criminal or civil proceeding. 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 defines a Brady list as a system, index, list, or other record containing the names of peace officers whose personnel files are likely to contain evidence of dishonesty or bias, as specified.

This bill would require each prosecuting agency to maintain a Brady list. The bill would, on and after January 1, 2022, require any state or local law enforcement agency maintaining personnel records of peace officers and custodial officers to annually, to each prosecuting agency within its jurisdiction, and upon request to any prosecuting agency, provide a list of names and badge numbers of officers employed by the agency in the 5 years prior to providing the list who meet specified criteria, including, among other things, that the officer has had sustained findings for conduct of moral turpitude or group bias or that the officer is on probation for a criminal offense. The bill would require the prosecuting agency to keep this list confidential, except as constitutionally required. The bill would additionally require a prosecuting agency, prior to placing an officer's name on a Brady list, to notify the officer as soon as practicable and provide the officer an opportunity to present information to the prosecuting agency against the officer's placement on the list, except as specified. By imposing new duties on prosecuting agencies and local law enforcement agencies, this bill would create a state-mandated local program.

This bill would incorporate additional changes to Section 1045 of the Evidence Code proposed by SB 776 to be operative only if this bill and SB 776 are enacted and this bill is enacted last.

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, if the Commission on State Mandates determines that the bill contains costs 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. Section 1045 of the Evidence Code is amended to read:

1045. (a) Nothing in this article shall be construed to 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 the officer perceived, and pertaining to the manner in which the officer performed their 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 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, unless the information is required to be disclosed pursuant to *Brady v. Maryland* (1963) 373 U.S. 83.

(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 that would not necessitate the disclosure of individual personnel records.

(d) Upon motion seasonably made by the governmental agency which 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 justice requires to protect the officer or agency from unnecessary annoyance, embarrassment or oppression.

(e) The court shall, in any case or proceeding permitting the disclosure or discovery of any peace 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. However, if the records are released to a prosecuting agency, the prosecuting agency may, with leave of a superior court judge, release the records in a subsequent criminal case when the officer to whom the records pertain will be testifying in order to comply with the requirements of *Brady v. Maryland* (1963) 373 U.S. 83.

SEC. 1.5. Section 1045 of the Evidence Code is amended to read:

1045. (a) 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 the officer perceived, and pertaining to the manner in which the officer performed their 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 from disclosure of both of the following:

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

(2) 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 that would not necessitate the disclosure of individual personnel records.

(d) Upon motion seasonably made by the governmental agency which 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 justice requires to protect the officer or agency from unnecessary annoyance, embarrassment or oppression.

(e) The court shall, in any case or proceeding permitting the disclosure or discovery of any peace 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. However, if the records are released to a prosecuting agency, the prosecuting agency may, with leave of a superior court judge, release the records in a subsequent criminal case when the officer to whom the records pertain will be testifying in order to comply with the requirements of *Brady v. Maryland* (1963) 373 U.S. 83.

SEC. 2. Section 832.11 is added to the Penal Code, to read:

832.11. (a) (1) A prosecuting agency shall maintain a Brady list, as defined in Section 3305.5 of the Government Code.

(2) Notwithstanding subdivision (a) of Section 832.7, subdivision (f) of Section 6254 of the Government Code, or any other law, any state or local law enforcement agency maintaining personnel records of peace officers and custodial officers shall, annually on and after January 1, 2022, to each city, county, or state prosecuting agency within its jurisdiction, and upon request at any time to any city, county, or state prosecuting agency, provide a list of the names and badge numbers of officers employed by the agency in the five years prior to providing the list who have had sustained findings for conduct described in subparagraphs (B) and (C) of paragraph (1) of subdivision (b) of Section 832.7, who have had sustained findings for conduct of moral turpitude or group bias, who have been convicted of a crime of moral turpitude, who are facing currently pending criminal charges, or who are on probation for a criminal offense. For purposes of this paragraph, conduct and crimes of "moral turpitude" means conduct or crimes found to be conduct or crimes of moral turpitude in published appellate court decisions.

(3) A prosecuting agency given a list pursuant to paragraph (2) shall keep that list confidential. However, the prosecuting agency may provide the name and badge number of an officer, along with notification that the officer is an officer on the list provided pursuant to paragraph (2), to an attorney of record in order to comply with the requirements of *Brady v. Maryland* (1963) 373 U.S. 83 or with the agency's statutory criminal discovery obligations.

(4) The notification described in paragraphs (2) and (3) may be used by either a prosecuting attorney or a criminal defense attorney to establish good cause for in camera review by a court under Sections 1043 and 1045 of the Evidence Code.

(5) Before placing a peace officer's name on a Brady list, as defined in Section 3305.5 of the Government Code, a prosecuting agency shall notify the officer and provide the officer an opportunity to present information to the prosecuting agency against the officer's placement on the list. If that prior notice cannot be provided consistently with the prosecutor's discovery obligations, the prosecuting agency shall comply with its discovery obligations, notify the officer as soon as practicable, and provide the officer an opportunity to present information to the prosecuting agency favoring the officer's removal from the list. The decision to place or retain a peace officer's name on a Brady list shall be within the sound discretion of the prosecuting agency. This paragraph does not create a right to judicial or administrative review of the prosecuting agency's decision to place or retain a peace officer's name on a Brady list.

(b) This section does not limit the discovery obligations of law enforcement or prosecutors under any other law.

SEC. 3. Section 1.5 of this bill incorporates amendments to Section 1045 of the Evidence Code proposed by both this bill and SB 776. That section shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2021, (2) each bill amends Section 1045 of the Evidence Code, and (3) this bill is enacted after SB 776, in which case Section 1 of this bill shall not become operative.

SEC. 4. If the Commission on State Mandates determines that this act contains 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.