

A MESSAGE FROM THE PRESIDENT, SEPTEMBER 2018

Happy fall season to all of you! Reminder for those of you working in patrol – shift signups will be on Wednesday, October 17, 2018 starting at 7:30am. Those of you signing up will receive a conformation email as to your exact time slot grouping. Your seniority numbers will all be confirmed as they are each year. If there should be a problem/question with the seniority number please get in touch with me.

A few deputies in Court Services have reached out inquiring as well regarding a sign up within court services. This is something that has not been conducted during my tenure, but something the DSA will be willing to explore if there is enough interest from those deputies in CSU. There is some research that needs to be put into doing something like this, along with the agreeance of those working at the CSU to actually do it. Anticipate a survey coming from the DSA regarding this issue in the near future.

Below I have outlined some legislation that was signed into law by Governor Brown. A lot of what was trying to get approved and passed did not happen due to the lobbying efforts of PORAC at the State Capital. See below for the numbers and descriptions – along with some of the votes from the members at the State Assembly and Senate.

SB 1421, Criminal Procedure and Sentencing, by Senator Nancy Skinner (D-Berkeley) This bill was recently introduced and is also sponsored by the ACLU and the CNPA. It is similar to SB 1286 (Leno, D-San Francisco) from 2016, but with some changes. PORAC was able to defeat Leno's bill.

SB 1286 stated that after a complaint was sustained by the department, the investigatory files will be made public. The new version titled SB 1421 states that those files will become public after the entire appeal process for the officer has been completed and if the officer's complaint is sustained. The bill deals with the more serious types of complaints, such as discharge of a firearm, discharge of a Taser, blow to the head or neck, serious use of force resulting in death or serious injury, sexual assault, dishonesty, etc.

PORAC, CAHP and other law enforcement organizations are opposed to SB 1421 and will continue to work with the author to see if some type of agreement is possible in this area. On September 7, 2018 this bill was signed by the Governor. I have attached the exact language of the bill so all of you are aware. This is a huge blow to the privacy of personnel files that have been protected for all these years. I am attaching the votes as well so you can all see how much work it takes in Sacramento to keep us afloat. PORAC's lobbyists believe, truly, due to AB931 grabbing so much attention – the votes leveraged to kill that and this one was successful. This law will be retroactive as well.

VOTES : Local delegation highlighted.

Assembly

Ayes: Arambula, Baker, Berman, Bloom, Bonta, Burke, Caballero, Calderon, Carrillo, Chau, Chávez, Chiu, Chu, Cooley, Cunningham, Eggman, Friedman, Gabriel, Cristina Garcia, Eduardo Garcia, Gipson, Gloria, Gonzalez Fletcher, Holden, Jones-Sawyer, Kalra, Kamlager-Dove, Levine, Limón, Maienschein, McCarty, Medina, Mullin, Nazarian, Quirk, Reyes, Rubio, Santiago, Mark Stone, Thurmond, Ting, Weber, Wood, Rendon

Noes: Acosta, Travis Allen, Bigelow, Brough, Cervantes, Chen, Choi, Cooper, Dahle, Daly, Flora, Fong, Frazier, Gallagher, Gray, Grayson, Harper, Irwin, Lackey, Low, Mathis, Mayes, Melendez, O'Donnell, Obernolte, Patterson, Quirk-Silva, Steinorth, Voepel, Waldron

	No Votes Recorded: Aguiar-Curry, Kiley, Muratsuchi, Rivas, Rodriguez, Salas
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Very disappointed to see Assemblyman Arambula voting for this. Although we haven't officially ever endorsed him, we have maintained a good working relationship. You will see the NO VOTES are the four other of our central valley delegation.

Senate Floor	25	15		
Ayes: Allen, Atkins, Beall, Bradford, De León, Dodd, Glazer, Hernandez, Hertzberg, Hill, Hueso, Jackson, Lara, Leyva, McGuire, Mitchell, Monning, Moorlach, Pan, Portantino, Skinner, Stern, Wieckowski, Wiener, Wilk				
Noes: Anderson, Bates, Chang, Fuller, Gaines, Galgiani, Morrell, Nguyen, Nielsen, Stone, Vidak				
No Votes Recorded: Berryhill, Cannella, Delgado, Roth				

All of what you will read in blue is new language added. PORAC was able to get some of it tweaked to help whatever we can.

SECTION 1.

The Legislature finds and declares all of the following:

(a) Peace officers help to provide one of our state's most fundamental government services. 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. Misuse of that authority can lead to grave constitutional violations, harms to liberty and the inherent sanctity of human life, as well as significant public unrest.

(b) The public has a right to know all about serious police misconduct, as well as about officer-involved shootings and other serious uses of force. 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.

SEC. 2.

Section 832.7 of the Penal Code is amended to read:

832.7.

(a) ~~Peace officer or custodial officer personnel records and~~ *Except as provided in subdivision (b), the personnel records of peace officers and custodial officers 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 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.

(b) (1) Notwithstanding subdivision (a), subdivision (f) of Section 6254 of the Government Code, or any other law, the following peace officer or custodial officer personnel records and records maintained by any state or local agency shall not be confidential and shall be made 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 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.

(B) (i) 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.

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

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

(C) 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.

(2) Records that shall be released pursuant to this subdivision include all 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.

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

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

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

(A) 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.

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

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

(D) Where there is a specific, articulable, and 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 another person.

(6) Notwithstanding paragraph (5), an agency may redact a record disclosed pursuant to this section, including personal identifying information, where, on the facts of the particular case, the public interest served by not disclosing the information clearly outweighs the public interest served by disclosure of the information.

(7) An agency may withhold a record of an incident described in subparagraph (A) of paragraph (1) that is the subject of an active criminal or administrative investigation, in accordance with any of the following:

(A) (i) During an active criminal investigation, disclosure may be delayed for up to 60 days from the date the use of force occurred or until the district attorney determines whether to file criminal charges related to the use of force, whichever occurs sooner. If an agency delays disclosure pursuant to this clause, the agency shall provide, in writing, the specific basis for the agency's determination that the interest in delaying disclosure clearly outweighs the public interest in disclosure. This writing shall include the estimated date for disclosure of the withheld information.

(ii) After 60 days from the use of force, the agency may continue to delay the disclosure of records or information if the disclosure could reasonably be expected to interfere with a criminal enforcement proceeding against an officer who used the force. If an agency delays disclosure pursuant to this clause, the agency shall, at 180-day intervals as necessary, provide, in writing, the specific basis for the agency's determination that disclosure could reasonably be expected to interfere with a criminal enforcement proceeding. The writing shall include the estimated date for the disclosure of the withheld information. Information withheld by the agency shall be disclosed when the specific basis for withholding is resolved, when the investigation or proceeding is no longer active, or by no later than 18 months after the date of the incident, whichever occurs sooner.

(iii) After 60 days from the use of force, the agency may continue to delay the disclosure of records or information if the disclosure could reasonably be expected to interfere with a criminal enforcement proceeding against someone other than the officer who used the force. If an agency delays disclosure under this clause, the agency shall, at 180-day intervals, provide, in writing, the specific basis why disclosure could reasonably be expected to interfere with a criminal enforcement proceeding, and shall provide an estimated date for the disclosure of the withheld information. Information withheld by the agency shall be disclosed when the specific basis for withholding is resolved, when the investigation or proceeding is no longer active, or by no later than 18 months after the date of the incident, whichever occurs sooner, unless extraordinary circumstances warrant continued delay due to the ongoing criminal investigation or proceeding. In that case, the agency must show by clear and convincing evidence that the interest in preventing prejudice to the active and ongoing criminal investigation or proceeding outweighs the public interest in prompt disclosure of records about use of serious force by peace officers and custodial officers. The agency shall release all information subject to disclosure that does not cause substantial prejudice, including any documents that have otherwise become available.

(iv) In an action to compel disclosure brought pursuant to Section 6258 of the Government Code, an agency may justify delay by filing an application to seal the basis for withholding, in accordance with Rule

2.550 of the California Rules of Court, or any successor rule thereto, if disclosure of the written basis itself would impact a privilege or compromise a pending investigation.

(B) If criminal charges are filed related to the incident in which force was used, the agency may delay the disclosure of records or information until a verdict on those charges is returned at trial or, if a plea of guilty or no contest is entered, the time to withdraw the plea pursuant to Section 1018.

(C) During an administrative investigation into an incident described in subparagraph (A) of paragraph (1), the agency may delay the disclosure of records or information until the investigating agency determines whether the use of force violated a law or agency policy, but no longer than 180 days after the date of the employing agency's discovery of the use of force, or allegation of use of force, by a person authorized to initiate an investigation, or 30 days after the close of any criminal investigation related to the peace officer or custodial officer's use of force, whichever is later.

(8) A record of a civilian complaint, or the investigations, findings, or dispositions of that complaint, shall not be released pursuant to this section if the complaint is frivolous, as defined in Section 128.5 of the Code of Civil Procedure, or if the complaint is unfounded.

~~(b)~~ (c) Notwithstanding ~~subdivision (a),~~ subdivisions (a) and (b), 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.

~~(c)~~ (d) Notwithstanding ~~subdivision (a),~~ subdivisions (a) and (b), a department or agency that employs peace 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)~~ (e) Notwithstanding ~~subdivision (a),~~ subdivisions (a) and (b), a department or agency that employs peace 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 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 or custodial officer or his or her agent or representative.

~~(e)~~ (f) (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.

(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)~~ (g) ~~Nothing in this section shall~~ This section does not affect the discovery or disclosure of information contained in a peace or custodial officer's personnel file pursuant to Section 1043 of the Evidence Code.

(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.

(i) Nothing in this chapter is intended to limit the public's right of access as provided for in Long Beach Police Officers Association v. City of Long Beach (2014) 59 Cal.4th 59.

SEC. 3.

Section 832.8 of the Penal Code is amended to read:

832.8.

As used in Section 832.7, the following words or phrases have the following meanings:

~~As (a) used in Section 832.7, "personnel~~ "Personnel records" means any file maintained under that individual's name by his or her employing agency and containing records relating to any of the following:

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

~~(b)~~ (2) Medical history.

~~(c)~~ (3) Election of employee benefits.

~~(d)~~ (4) Employee advancement, appraisal, or discipline.

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

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

(b) "Sustained" means a final determination by an investigating agency, commission, board, hearing officer, or arbitrator, as applicable, following an investigation and opportunity for an administrative appeal pursuant to Sections 3304 and 3304.5 of the Government Code, that the actions of the peace officer or custodial officer were found to violate law or department policy.

(c) "Unfounded" means that an investigation clearly establishes that the allegation is not true.

SEC. 4.

The Legislature finds and declares that Section 2 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. 5.

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

Although Governor Brown has generally not supported any changes to the work comp presumption laws or employer/employee work comp regulations, in general, he did sign two important presumption bills before the end of the month. AB 1749 (Daly), was co-sponsored by PORAC and a couple other law enforcement organizations and was drafted as a result of the Las Vegas shooting where several California peace officers were injured. SB 1086 (Atkins) was introduced as a continuation of an effort by PORAC and the California Professional Firefighters (CPF) to extend the cancer presumption two years ago.

AB 1749 by Assemblymember Tom Daly (D-Anaheim)

Workers' compensation: off duty peace officer – CO-SPONSOR

Unlike most jobs, law enforcement is uniquely trained on how to react to attacks on the public. AB 1749 would ensure that California's Workers Compensation System covers peace officers who acted outside of state boundaries and were injured, regardless of their injuries.

SB 1086 by Senator Toni Atkins (D – San Diego)

Workers' compensation: firefighters and peace officers – CO-SPONSOR

The bill removes the sunset on the extended statute of limitations provided for presumptive cancer related deaths for family members applying for the special workers compensation death benefit.