KARL OLSON (SBN 104760)
AARON R. FIELD (SBN 310648)
CANNATA O'TOOLE FICKES & OLSON LLP
100 Pine Street, Suite 350
San Francisco, California 94111
Telephone: (415) 409-8900
Facsimile: (415) 409-8904
Email: kolson@cofolaw.com
afield@cofolaw.com

Attorneys for Petitioners
THE SACRAMENTO BEE and LOS ANGELES TIMES

JEFFREY GLASSER (SBN 252596)
LOS ANGELES TIMES
2300 E Imperial Hwy
El Segundo, CA 90245
Telephone: (213) 237-5000
Email: jeff.glasser@latimes.com

Attorneys for Petitioner
LOS ANGELES TIMES

JUAN CORNEJO (SBN 161569)
THE SACRAMENTO BEE
2100 Q Street
Sacramento, CA 95816
Telephone: (916) 3211848
Email: jcornejo@mcclatchy.com

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

THE SACRAMENTO BEE and LOS ANGELES TIMES,

Petitioners,

v.

SACRAMENTO COUNTY SHERIFF'S DEPARTMENT,

Respondent.

Case No. _____

PETITION FOR DECLARATORY RELIEF AND WRIT OF MANDATE UNDER THE CALIFORNIA PUBLIC RECORDS ACT (GOV. CODE § 6258)

CANNATA O'TOOLE FICKES & OLSON LLP
ATTORNEYS AT LAW
100 PINE STREET, SUITE 350, SAN FRANCISCO CA, 94111
TEL: 415.409.8900 – FAX: 415.409.8904

I.
INTRODUCTION

1. This Petition for Writ of Mandate seeks access to records of vital importance to enable the public in California to monitor the performance of peace officers' duties. As the California Legislature declared in enacting Senate Bill 1421 in 2018, "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." The public interest in monitoring police conduct is especially strong in Sacramento County (as in the rest of California), where officer-involved shootings which claimed the lives of Stephon Clark, Mikel McIntyre and Darell Richards have ignited public protests and criticism of police. For these reasons and those set forth below, this Petition should be granted.

II.
PARTIES

2. Petitioner *The Sacramento Bee* ("the *Bee*") is a daily newspaper of general circulation, Sacramento's largest. It is a division of McClatchy Newspapers, Inc. and is published in Sacramento County.

3. Petitioner *Los Angeles Times* ("the *Times*") is a daily newspaper of general circulation, California's largest, published by Los Angeles Times Communications LLC in Los Angeles County. Petitioners the *Bee* and the *Times* are hereafter collectively referred to as "petitioners."

4. Respondent Sacramento County Sheriff's Department (hereafter "Respondent" or "the Sheriff's Department") is a local agency as defined by Government Code section 6252(a). It is located in the city and the county of Sacramento, and it maintains the records requested by petitioners in Sacramento County.

III.
FACTUAL BACKGROUND

5. On or about January 7, 2019, Molly Sullivan, a reporter for the *Bee*, made a Public

CANNATA O'TOOLE FICKES & OLSON LLP
ATTORNEYS AT LAW
100 PINE STREET, SUITE 350, SAN FRANCISCO CA, 94111
TEL: 415.409.8900 – FAX: 415.409.8904

Records Act request to respondent, Request # 19-47, pursuant to Government Code section 6250 and Article I, Section 3(b) of the California Constitution, seeking, among other things, (1) records from January 1, 2014 to January 1, 2019 of sustained findings that a peace officer employed by the Sheriff's Department committed sexual assault or dishonesty-related misconduct, or was subject to a sustained investigation; and (2) letters of discipline from January 1, 2014 through 1, 2019, for current and former sworn officers employed by Respondent related to reports, investigations, or findings from any incident involving the discharge of a firearm at a person by a peace officer, and incidents in which the use of force by a peace officer against a person resulted in death or great bodily injury. The full text of this request is attached hereto as **Exhibit A**.

6. Respondent quickly denied the *Bee*'s request in its entirety. In a letter dated January 10, 2019, which is attached hereto as **Exhibit B**, Respondent, through Tanya Birch, an assistant to Deputy County Counsel Peter Zilaff, stated that Respondent has records responsive to the *Bee*'s request, but is withholding those records until there is what it called "clear legal authority to release such records" because "Senate Bill 1421, codified as Penal Code section 832.7,was not expressly made retroactive."

7. On or about January 1, 2019, *Times* reporters Ben Poston and Maya Lau made a Public Records Act request to the Sheriff's Department seeking records similar to those sought in the *Bee*'s Public Records Act request. The *Times*' request, which is attached hereto as **Exhibit C**, sought, among other things, letters of discipline from January 1, 2014 through January 1, 2019 for current and former sworn officers employed by Respondent related to reports, investigations, or findings from any incident involving the discharge of a firearm at a person by a peace officer; any incident in which the use of force by a peace officer or custodial officer against a person resulted in death or great bodily injury; any incident in which a sustained finding was made that an officer engaged in sexual assault involving a member of the public; and any incident in which a sustained finding was made of dishonesty by a peace officer or custodial officer related to the reporting, investigation or prosecution of a crime.

8. Respondent responded to the *Times*' request on the same day it responded to the

Bee's request, January 10, 2019, with the same refusal to disclose records. Respondent's January 10, 2019 response, which is attached hereto as **Exhibit D**, stated that it has records responsive to the *Times*'s request, but is withholding them until there is what it called "clear legal authority" to release such records."

IV.
FIRST CAUSE OF ACTION

(Violation of the California Public Records Act, Gov. Code § 6250 et seq.)

9. Petitioners reallege Paragraphs 1 through 8 above as though fully set forth herein.

10. The Public Records Act, Government Code section 6250 et seq., provides that "access to information concerning the conduct of the public's business is a fundamental and necessary right of every person in this state." The records requested in the *Bee*'s and *Times*' Public Records Act requests, **Exhibit A** and **Exhibit C** hereto, concern the conduct of the public's business and are vital to enable the public, and in particular the residents of Sacramento County, to assess the performance of, and possible misconduct by, peace officers. As the Legislature declared in enacting Senate Bill 1421, "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." The text of Senate Bill 1421 (chapter 988) is attached hereto as **Exhibit E**.

11. The records sought by the *Bee* and the *Times* in their Public Records Act requests, **Exhibit A** and **Exhibit C** hereto, are explicitly made disclosable by Senate Bill 1421. SB 1421 simply places peace officers on a similar plane as other public employees in California. The public for decades has obtained access to records of complaints and discipline against public employees when there is reasonable cause to believe complaints are well-founded. (*See, e.g., American Federation of State, County and Municipal Employees Local 1650* v. *Regents of the University of California* (1978) 80 Cal. App. 3d 913, 918; *Bakersfield City School District v.*

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ATTORNEYS AT LAW
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Superior Court (2004) 118 Cal.App.4th 1041.) As the *Bakersfield City School District* court held, "a review of the cases . . . leads to the premise that there is a strong public policy for disclosure of true charges. The cases do not stand for the premise that either a finding of the truth of the complaints contained in the personnel records or the imposition of employee discipline is a prerequisite to disclosure." (*Id.* at p. 1046.) The public under SB 1421 has similarly gained access to specified records of peace officers reflecting misconduct or certain incidents involving lethal force, the types of records sought by petitioners here.

12. Respondent has taken the position that Senate Bill 1421 does not apply to the records requested "so only records of covered events occurring on or after January 1, 2019 will be disclosed." (See **Exhibit B**; **Exhibit D**.) Respondent is mistaken. Indeed, even an opponent of Senate Bill 1421, the Los Angeles County Professional Peace Officers Association ("LACPPOA"), admitted, "Moreover, our reading of Senate Bill 1421 is that making the records of an officer's lawful and in policy conduct is retroactive in its impact. In other words, notwithstanding that the officer's conduct was entirely in policy, his or her records are available for public inspection irrespective of whether or not they occurred prior to the effective date of SB 1421." The LACPPOA's comments are contained on page 16 of the Senate Committee on Public Safety's April 17, 2018 Analysis of SB 1421, which is attached hereto as **Exhibit E**, and are therefore cognizable legislative history showing legislative intent that SB 1421 applies to the records requested herein and other records subject to disclosure pursuant to the bill.

13. Petitioners have no plain, speedy and adequate remedy to obtain the records they seek other than this Petition. The Sheriff's Department has made it clear that it will not produce the records requested without a court order, and therefore petitioners will be unable to inform their readers about whether such incidents as the Richards, McIntyre and Clark shootings (covered by the *Bee* in **Exhibit F** and **Exhibit G** hereto) resulted from sustained findings of police misconduct. The public will also be deprived of information about many officer-involved shootings in Los Angeles and elsewhere in the state which have been covered by the *Times* in, among other articles, **Exhibit H** hereto, and which are matters of great public interest.

V.

CANNATA O'TOOLE FICKES & OLSON LLP
ATTORNEYS AT LAW
100 PINE STREET, SUITE 350, SAN FRANCISCO CA, 94111
TEL: 415.409.8900 – FAX: 415.409.8904

PRAYER FOR RELIEF

WHEREFORE, petitioners pray as follows:

1. That this Court grant this Petition for Writ of Mandate and order disclosure of all of the records requested by the *Bee* and the *Times* in their Public Records Act requests, **Exhibit A** and **Exhibit C** hereto;

2. That this Court grant declaratory relief holding that the Public Records Act and Senate Bill 1421 apply to and mandate disclosure of all of the records requested in by the *Bee* and the *Times* in their Public Records Act requests, **Exhibit A** and **Exhibit C** hereto, and that respondent has violated the Public Records Act by failing to disclose said records to the *Bee* and the *Times*;

3. Alternatively, even if this Court disagrees with petitioners that records in existence prior to January 1, 2019 are disclosable, the Court should declare and mandate that records of findings of misconduct sustained after January 1, 2019 but involving incidents prior to January 1, 2019, such as the Clark and Richards shootings, must be disclosed;

4. Alternatively, that the Court conduct an in camera review, if it deems it necessary, of some or all of the records requested pursuant to Government Code section 6259(a);

5. Alternatively, if the Court does not immediately order disclosure of the records requested by the *Bee* and the *Times* in their Public Records Act requests, **Exhibit A** and **Exhibit C** hereto, that it order Respondent to show cause why the records requested should not be disclosed, and prepare a log of withheld documents, and thereafter order the records requested be disclosed;

6. That petitioners be awarded attorney's fees and costs against the Sheriff's Department and/or any individual or entity who may attempt to block disclosure of the records requested, pursuant to Government Code section 6259(d) and/or Code of Civil Procedure section 1021.5; and

7. For such other and further relief as the Court may deem just and proper.

Dated: January 25, 2019

CANNATA O'TOOLE FICKES & OLSON LLP

KARL OLSON
Attorneys for Petitioners
THE SACRAMENTO BEE and LOS ANGELES TIMES

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VERIFICATION

I, Lauren Gustus, declare as follows:

1. I am the Executive Editor of *The Sacramento Bee*, one of the petitioners in this action, and I am authorized to make this verification on its behalf.

2. I have read the foregoing Petition for Writ of Mandate. The same is true of my own knowledge, except as to matters stated on information and belief, and as to those matters, I believe them to be true.

3. I declare under penalty of perjury that the foregoing is true and correct.

Executed in _San Luis Obispo, California, on January 25, 2019.

LAUREN GUSTUS

VERIFICATION

I, Jack Leonard, declare as follows:

1. I am a Deputy Metro Editor of *The Los Angeles Times*, one of the petitioners in this action, and I am authorized to make this verification on its behalf.

2. I have read the foregoing Petition for Writ of Mandate. The same is true of my own knowledge, except as to matters stated on information and belief, and as to those matters, I believe them to be true.

3. I declare under penalty of perjury that the foregoing is true and correct.

Executed in Los Angeles, California, on January 25, 2019.

JACK LEONARD

CANNATA O'TOOLE FICKES & OLSON LLP
ATTORNEYS AT LAW
100 PINE STREET, SUITE 350, SAN FRANCISCO CA, 94111
TEL: 415.409.8900 – FAX: 415.409.8904

EXHIBIT A

Request #19-47

CLOSED

Pursuant to the California Public Records Act, Section 6250 et seq. of the Government Code and the California state Constitution, as amended by Proposition 59, and all other applicable laws, including Penal Code Section 832.7(b), The Sacramento Bee is asking for records in the possession of your agency.

- Please provide materials in an electronic, searchable format when possible.
- Please consider each record an individual and severable request for purposes of release, exemption or invoking a time extension.
- If a portion of requested materials are not immediately available, to the extent possible, please release immediately those records that are available.

Specifically, we would like to review:

1. Records from Jan. 1, 2014 to Jan. 1, 2019 of sustained findings that a peace officer employed by your agency committed sexual assault or dishonesty-related misconduct, or was subject to a sustained investigation (as defined by Cal. PEN code 832.8(b) for:

- "Sexual Assault" as defined by Cal. PEN. Code § 832.7(b)(1)(B)(ii).
- Misconduct as defined by Cal. PEN. Code § 832.7(b)(1)(C).
- PEN. Code § 832.7 (b)(2).
- PEN. Code § 832.7 (b)(ii).
- PEN. Code § 832.7 (b)(2).

- The response should reasonably include all applicable records specified by statute,, including but not limited to: all investigative reports; photographic, audio and video evidence; transcripts and recordings of interviews; 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.

2. Letters of discipline from Jan. 1, 2014, through Jan. 1, 2019, for current and former sworn officers employed by your agency relating to reports, investigations, or findings from:

    1. Any incident involving the discharge of a firearm at a person by a peace officer or custodial officer;

    2. Any 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;

    3. Any 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;

    4. Any 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.

By Letters of Discipline, please include any documents sent to peace officers that notify them of the discipline being imposed against them. The documents may also include the severity of the discipline; the policies and procedures violated; the basic facts of the case, the officer's work history and whether the officer contested the discipline.

Please respond to this request promptly. As you probably know, the following legal rules apply to this request:

Prompt Disclosure: Government Code Section 6253 (b), (d)
Records not exempt from disclosure are to be made "promptly available." No provision of the CPRA, including the response periods noted below, "shall be construed to permit an agency to delay or obstruct the inspection or copying of public records."

Deadlines: Government Code Section 6253 (c)
You are required "promptly" and in no case more than 10 calendar days from the date of this request, to determine, and inform us in writing, whether you are going to decline all or part of the request, and the law(s) that you are relying on, unless within that period you notify us in writing that you intend to take up to an additional 14 days to make the determination because of your need:

- to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

- to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request;
- for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein; or
- to compile data, to write programming language or a computer program, or to construct a computer report to extract data.

Your notice must set forth "the reasons for the extension and the date on which a determination is expected to be dispatched." If you determine that any of the records I have requested are disclosable, your written notice must "state the estimated date and time when the records will be made available."
Aid from agency: Section 6253.1(a)(1) and (2)
You are required to "(1) Assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated, and (2) Describe the information technology and physical location in which the records exist."

Constitutional Rule of Interpretation: Article I, Section 3 (b)
The California Constitution requires that the Public Records Act "shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access." This rule must be heeded in interpreting any exemptions from disclosure you believe to be applicable.

To the extent that a portion of the information we have requested is exempt by express provisions of law, the public records act additionally requires segregation and deletion of that material in order that the remainder of the information may be provided in satisfaction of our request.

If you determine that an express provision of law exists to exempt from disclosure all or a portion of the information we have requested, please respond to us in writing, via email, citing the specific portion of the law that allows for the exemption. In addition, the act requires government agencies to "provide suggestions for overcoming any practical basis for denying access to the records or information sought."
Read less

Received
January 7, 2019 via web

Departments
Sheriff's Department

Requester
Molly Sullivan
msullivan@sacbee.com
2100 Q Street, Sacramento , CA 95816
916-321-1176
The Sacramento Bee

EXHIBIT B

SACRAMENTO COUNTY SHERIFF'S DEPARTMENT

SCOTT R. JONES
Sheriff

January 10, 2019

SacBee
Attn: Molly Sullivan
2100 Q Street
Sacramento, CA 95816
Sent Via: msullivan@sacbee.com

Re: Response to CPRA Request Concerning Sexual Assault, Use-of-Force, and Dishonesty

Dear Ms. Sullivan,

Request 1: "Records from Jan. 1, 2014 to Jan. 1, 2019 of sustained findings that a peace officer employed by your agency committed sexual assault or dishonesty-related misconduct, or was subject to a sustained investigation (as defined by Cal. PEN code 832.8(b) for:

- "Sexual Assault" as defined by Cal. PEN. Code § 832.7(b)(1)(B)(ii)
- Misconduct as defined by Cal. PEN. Code § 832.7(b)(1)(C)
- PEN. Code § 832.7 (b)(2)
- PEN. Code § 832.7 (b)(ii)
- PEN. Code § 832.7 (b)(2)
- The response should reasonably include all applicable records specified by statute,, including but not limited to: all investigative reports; photographic, audio and video evidence; transcripts and recordings of interviews; 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 or discipline or other documentation reflecting implementation of corrective action;"

Request 2: "Letters of discipline from Jan. 1, 2014, through Jan. 1, 2019, for current and former sworn officers employed by your agency relating to reports, investigations, or findings from:

1. Any incident involving the discharge of a firearm at a person by a peace officer or custodial officer;
2. Any 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;
3. Any 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

4. Any 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;"

Response: The Sacramento Sheriff's Department has documents responsive to this request, but is withholding those records. Peace officer personnel records are protected by law and may only be legally disclosed pursuant to sections 1043 and 1046 of the Evidence Code.

Senate Bill 1421, codified as Penal Code section 832.7, was not expressly made retroactive. Any law not expressly made retroactive is prospective on the effective date stated in the law (or upon signature by the governor in the case of emergency legislation). In this case, the law became effective on January 1, 2019, so only records of covered events occurring on or after January 1, 2019 will be disclosed.

The issue of retroactivity is currently being litigated and the Sheriff's Department will be monitoring judicial determination of Penal Code section 832.7 as amended. Without clear legal authority to release such records, it remains illegal for us to do so, and subjects the Sheriff's Department and the County to considerable potential liability.

If you have any questions, please inquire to Legal Affairs.

Thank you for your inquiry.

Very Truly Yours,

SCOTT JONES, SHERIFF

Tanya Birch

SRO I Tanya Birch
Assistant to Deputy County Counsel Peter Zilaff
Legal Advisor to the Sheriff

TB - tmb

EXHIBIT C

Los Angeles Times

Jan. 1, 2019

To Whom It May Concern:

Pursuant to the California Public Records Act, Section 6250 et seq. of the Government Code and the California state Constitution, as amended by Proposition 59, and all other applicable laws, including Penal Code Section 832.7(b), we are asking for records in the possession of your agency. Specifically, we would like to review:

- Letters of discipline from Jan. 1, 2014, through Jan. 1, 2019, for current and former sworn officers employed by your agency relating to reports, investigations, or findings from:
    - Any incident involving the discharge of a firearm at a person by a peace officer or custodial officer;
    - Any 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;
    - Any 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;
    - Any 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.

By Letters of Discipline, we are referring to any documents sent to peace officers that

time when the records will be made available."

Constitutional Rule of Interpretation: Article I, Section 3 (b)
The California Constitution requires that the Public Records Act "shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access." This rule must be heeded in interpreting any exemptions from disclosure you believe to be applicable.

To the extent that a portion of the information we have requested is exempt by express provisions of law, the public records act additionally requires segregation and deletion of that material in order that the remainder of the information may be provided in satisfaction of our request.

If you determine that an express provision of law exists to exempt from disclosure all or a portion of the information we have requested, please respond to us in writing, via email, citing the specific portion of the law that allows for the exemption. In addition, the act requires government agencies to "provide suggestions for overcoming any practical basis for denying access to the records or information sought."

Please don't hesitate to contact us if you have any questions about our request. Ben Poston can be reached at (213) 237-2205 or ben.poston@latimes.com and Maya Lau can be reached at 213-221-5754 or maya.lau@latimes.com.

Sincerely,

Ben Poston and Maya Lau | Los Angeles Times Staff Writers

EXHIBIT D

SACRAMENTO COUNTY SHERIFF'S DEPARTMENT

SCOTT R. JONES
Sheriff

January 10, 2019

LA Times
Attn: Ben Poston and Maya Lau
2300 E. Imperial Highway
El Segundo, CA 90245
Sent Via: ben.poston@latimes.com

Re: Response to CPRA Request Concerning Letters of Discipline

Dear Mr. Poston and Ms. Lau,

Request 1: "Letters of discipline from Jan. 1, 2014, through Jan. 1, 2019, for current and former sworn officers employed by your agency relating to reports, investigations or findings from:

- Any incident involving the discharge of a firearm at a person by a peace officer or custodial officer;
- Any 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;
- Any 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;
- Any 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;"

Response: The Sacramento Sheriff's Department has documents responsive to this request, but is withholding those records. Peace officer personnel records are protected by law and may only be legally disclosed pursuant to sections 1043 and 1046 of the Evidence Code.

Senate Bill 1421, codified as Penal Code section 832.7, was not expressly made retroactive. Any law not expressly made retroactive is prospective on the effective date stated in the law (or upon signature by the governor in the case of emergency legislation).

In this case, the law became effective on January 1, 2019, so only records of covered events occurring on or after January 1, 2019 will be disclosed.

The issue of retroactivity is currently being litigated and the Sheriff's Department will be monitoring judicial determination of Penal Code section 832.7 as amended. Without clear legal authority to release such records, it remains illegal for us to do so, and subjects the Sheriff's Department and the County to considerable potential liability.

If you have any questions, please inquire to Legal Affairs.

Thank you for your inquiry.

Very Truly Yours,

SCOTT JONES, SHERIFF

Tanya Birch

SRO I Tanya Birch
Assistant to Deputy County Counsel Peter Zilaff
Legal Advisor to the Sheriff

TB - tmb

EXHIBIT E

SB-1421 Peace officers: release of records. (2017-2018)

Date Published: 10/01/2018 09:00 PM

Senate Bill No. 1421

CHAPTER 988

An act to amend Sections 832.7 and 832.8 of the Penal Code, relating to peace officer records.

[Approved by Governor September 30, 2018. Filed with Secretary of State September 30, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1421, Skinner. Peace officers: release of records.

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 requires any peace officer or custodial officer personnel records, as defined, and any records maintained by any state or local agency relating to complaints against peace officers and custodial officers, or any information obtained from these records, to be confidential and prohibits the disclosure of those records in any criminal or civil proceeding, except by discovery. Existing law describes exceptions to this requirement for investigations or proceedings concerning the conduct of peace officers or custodial officers, and for 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 require, notwithstanding any other law, certain peace officer or custodial officer personnel records and records relating to specified incidents, complaints, and investigations involving peace officers and custodial officers to be made available for public inspection pursuant to the California Public Records Act. The bill would define the scope of disclosable records. 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. Additionally the bill would authorize redaction where, on the facts of the particular case, the public interest served by nondisclosure clearly outweighs the public interest served by disclosure. The bill would allow the delay of disclosure, as specified, for records relating to an open investigation or court proceeding, subject to certain limitations.

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.

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 no reimbursement is required by this act for a specified reason.

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 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) 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.

(c) Notwithstanding 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.

(d) Notwithstanding 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.

(e) Notwithstanding 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.

(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.

(g) 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:

(a) "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:

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

(2) Medical history.

(3) Election of employee benefits.

(4) Employee advancement, appraisal, or discipline.

(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.

(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.

SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
2017 - 2018 Regular

Bill No:	SB 1421	**Hearing Date:**	April 17, 2018
Author:	Skinner		
Version:	April 2, 2018		
Urgency:	No	**Fiscal:**	Yes
Consultant:	GC		

Subject: ***Peace Officers: Release of Records***

HISTORY

Source: Alliance for Boys and Men of Color
American Civil Liberties Union of California
Anti Police – Terror Project
Black Lives Matter – California
California Faculty Association
California News Publishers Association
Communities United for Restorative Youth Justice
PICO California
PolicyLink
Youth Justice Coalition

Prior Legislation: SB 1286 (Leno). 2016, failed passage in Senate Appropriations
SB 1019 (Romero), 2008, failed passage in Assembly Pub. Safety
AB 1648 (Leno), 2007, failed passage in Assembly Pub. Safety

Support: Advancement Project; AF3IRM Los Angeles; AFSCME Local 329; Alliance San Diego; American Friends Service Committee; Anaheim Community Coalition; Anti-Recidivism Coalition; Arab American Civic Council; Asian Americans Advancing Justice; Asian Law Alliance; Bend the Arc: Jewish Action; The Black Jewish Justice Alliance; Cage-Free Repair; California Alliance for Youth and Community Justice; California Broadcasters Association; California Church IMPACT; California Federation of Teachers, AFT, AFL-CIO; California Immigrant Policy Center; California Immigrant Youth Justice Alliance; California Latinas for Reproductive Justice; California Nurses Association; California Public Defenders Association; Californians Aware; Californians for Justice; Californians United for Responsible Budget; Catholic Worker Community; CDTech; Center for Juvenile and Criminal Justice; Chican@s Unidos; Children's Defense Fund; Chispa; Church in Ocean Park; Climate Action Campaign; Coalition for Justice and Accountability; Committee for Racial Justice (CRJ); Community Coalition; Conference of California Bar Associations; Council on American-Islamic Relations, California; Courage Campaign; Critical Resistance; CTT; Davis People Power; Dignity and Power No; Drain the NRA; Earl B. Gilliam Bar Association; East Bay Community Law Center; The Education Trust-West; Ella Baker Center for Human Rights; Equal Justice Society; Equity for Santa Barbara; Fannie Lou Hamer Institute; First Amendment Coalition; Friends Committee on Legislation of California; Greater Long Beach; Homeboy Industries; Immigrant Legal

Resource Center; Indivisible CA: StateStrong; InnerCity Struggle; Interfaith Worker Justice San Diego; IUCC Advocates for Peace and Justice; Jack and Jill America of America, Incorporated, San Diego Chapter; Journey House; Koreatown Immigrant Workers Alliance; LA Voice; LAANE; Law Enforcement Accountability Network (LEAN); Lawyers Committee for Civil Rights, San Francisco Bay Area; Legal Services for Prisoners with Children; March and Rally Los Angeles; Media Alliance; Mexican Legal Defense and Education Fund (MALDEF); Mid-City CAN; Motivating Individual Leadership for Public Advancement; National Juvenile Justice Network; National Lawyers Guild, Los Angeles; National Lawyers Guild, San Francisco Bay Area; A New Path; A New Way of Life Re-entry Project (ANWOL); Oak View ComUNIDAD; Oakland Privacy; Orange County Communities Organized for Responsible Development; Orange County Equality Coalition; Partnership for the Advancement of New Americans; Press4Word; Prevention Institute; Public Health Justice Collective; R Street Institute; Reporters Committee for Freedom of the Press; Resilience Orange County; Richard Barrera, Trustee, Board of Education; San Diego Unified School District; Riverside Coalition for Police Accountability; Riverside Temple Beth El; Root and Rebound; San Diego Organizing Project; San Francisco District Attorney's Office; San Francisco Public Defender; San Gabriel Valley Immigrant Youth Coalition; Santa Ana Building Healthy Communities; Service Employees International Union (SEIU) Local 1000; Showing Up for Racial Justice, Long Beach; Showing Up for Racial Justice, Marin; Showing Up for Racial Justice, Rural-NorCal; Showing Up for Racial Justice, Sacramento; Showing Up for Racial Justice, Santa Barbara; Silicon Valley De-Bug; Social Justice Learning Institute; Stop LAPD Spying Coalition; Street Level Health Project; Think Dignity; Transgender Law Center; UAW 2865, UC Student-Workers Union; Union of the Alameda County Public Defender's Office; UNITE HERE Local 11; Urban Peace Institute; Urban Peace Movement; Village Connect; The W. Haywood Burns Institute; White People for Black Lives/AWARE LA; Women For: Orange County; Women Foundation of California; Young Women's Freedom Center; Youth Alive; 8 private individuals

Opposition: Association of Deputy District Attorneys; Association for Los Angeles Deputy Sheriffs; California Association of Highway Patrolmen (CAHP); California District Attorneys Association; California Narcotic Officers' Association; California State Sheriffs' Association; Los Angeles County Professional Peace Officers Association; Los Angeles Deputy Probation Officers, AFSCME Local 685; Los Angeles Police Protective League; Peace Officers Research Association of California (PORAC); San Bernardino Sheriff-Coroner's Office

PURPOSE

The purpose of this bill is to permit inspection of specified peace and custodial officer records pursuant to the California Public Records Act. Records related to reports, investigations, or findings may be subject to disclosure if they involve the following: (1) incidents involving the discharge of a firearm or electronic control weapons by an officer; (2) incidents involving strikes of impact weapons or projectiles to the head or neck area; (3) incidents of deadly force or serious bodily injury by an officer; (4) incidents of sustained sexual assault by an officer; or (5) incidents relating to sustained findings of dishonesty by a peace officer.

Existing law finds and declares in enacting the California Public Records Act, the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state. (Gov. Code § 6250.)

Current law requires that in any case in which discovery or disclosure is sought of peace officer or custodial officer personnel records or records of citizen complaints against peace officers or custodial officers 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 has custody and control of the records, as specified. Upon receipt of the notice, the governmental agency served must immediately notify the individual whose records are sought.

The motion must include all of the following:

- 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 has custody and control of the records, and the time and place at which the motion for discovery or disclosure must be heard.

- A description of the type of records or information sought.

- 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.

No hearing upon a motion for discovery or disclosure shall be held without full compliance with the notice provisions, 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. (Evid. Code § 1043.)

Existing law states that nothing in this article can 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 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.

In determining relevance, the court examines the information in chambers in conformity with Section 915, and must exclude from disclosure:

- 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.

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

- Facts sought to be disclosed that are so remote as to make disclosure of little or no practical benefit. (Evid. Code § 1045, subds. (a) and (b).)

Existing law states that when determining relevance where the issue in litigation concerns the policies or pattern of conduct of the employing agency, the court must consider whether the information sought may be obtained from other records maintained by the employing agency in the regular course of agency business which would not necessitate the disclosure of individual personnel records. (Evid. Code § 1045, subd. (c).)

Existing law states that 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. (Evid. Code § 1045 subd. (d).)

Existing law states that the court must, 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. (Evid. Code § 1045 subd. (e).)

Existing law requires that in any case, otherwise authorized by law, in which the party seeking disclosure is alleging excessive force by a peace officer or custodial officer, as defined in Section 831.5 of the Penal Code, in connection with the arrest of that party, or for conduct alleged to have occurred within a jail facility, the motion shall include a copy of the police report setting forth the circumstances under which the party was stopped and arrested, or a copy of the crime report setting forth the circumstances under which the conduct is alleged to have occurred within a jail facility. (Evid. Code § 1046.)

Existing law provides that any agency in California that employs peace officers shall establish a procedure to investigate complaints by members of the public against the personnel of these agencies, and must make a written description of the procedure available to the public. (Pen. Code § 832.5, subd. (a)(1).)

Existing law provides that complaints and any reports or findings relating to these complaints must be retained for a period of at least five years. All complaints retained pursuant to this subdivision may be maintained either in the officer's general personnel file or in a separate file designated by the agency, as specified. However, prior to any official determination regarding promotion, transfer, or disciplinary action by an officer's employing agency, the complaints determined to be frivolous shall be removed from the officer's general personnel file and placed in separate file designated by the department or agency, as specified. (Pen. Code § 832.5, subd. (b).)

Existing law provides that complaints by members of the public that are determined by the officer's employing agency to be frivolous, as defined, 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 and Section 1043 of the Evidence Code (which governs discovery and disclosure of police personnel records in legal proceedings). (Pen. Code § 832.5, subd. (c).)

Existing law provides that peace 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 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. (Pen. Code § 832.7, subd. (a).)

Existing law states that a department or agency must release to the complaining party a copy of his or her own statements at the time the complaint is filed. (Pen. Code § 832.7, subd. (b).)

Existing law provides that 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. (Penal Code § 832.7, subd. (c).)

Existing law provides that 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. The department or agency shall provide written notification to the complaining party of the disposition of the complaint within 30 days of the disposition. (Pen. Code § 832.7, subds. (d) and (e).)

Existing law provides that, as used in Section 832.7, "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:

- Personal data, including marital status, family members, educational and employment history, home addresses, or similar information.
- Medical history.
- Election of employee benefits.
- Employee advancement, appraisal, or discipline.
- 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.
- Any other information the disclosure of which would constitute an unwarranted invasion of personal privacy. (Pen. Code § 832.8.)

Existing law states that an administrative appeal instituted by a public safety officer under this chapter is to be conducted in conformance with rules and procedures adopted by the local public agency. (Gov. Code §, 3304.5.)
Existing law creates the California Public Records Act, and states that the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state. (Gov. Code §§ 6250 and 6251.)

Existing law provides that public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided. Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law. (Gov. Code § 6253, subd. (a).)

Existing law provides that any public agency must justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record. (Gov. Code §, 6255, subd. (a).)

Existing law provides that records exempted or prohibited from disclosure pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege, are exempt from disclosure under the California Public Records Act. (Gov. Code §, 6250, et seq.)

This bill provides the public access, through the CPRA, to records related to:

- Reports, investigation, or findings of:
    - Incidents involving the discharge of a firearm at a person by an officer.
    - Incidents involving the discharge of an electronic control weapon at a person by an officer.
    - Incidents involving a strike with an impact weapon or projectile to the head or neck of a person by an officer.
    - Incidents involving use of force by an officer which results in death or serious bodily injury.

- Any record relating to an incident where there was a sustained finding that an officer engaged in sexual assault of a member of the public.

- Any record relating to an incident where there was a sustained finding that an officer was dishonest relating to the reporting, investigation, or prosecution of a crime, or relating to the misconduct of another peace officer, including but not limited to perjury, false statements, filing false reports, destruction/falsifying/or concealing evidence, or any other dishonesty that undermines the integrity of the criminal justice system.

This bill provides that the records released are to be limited to the framing allegations or complaint and any facts or evidence collected or considered. All reports of the investigation or

analysis of the evidence or the conduct, and any findings, recommended findings, discipline, or corrective action taken shall also be disclosed if requested pursuant to the CPRA.

This bill states that records from prior investigations or assessments of separate incidents are not disclosable unless they are independently subject to disclosure under the provisions of this Act. *This bill* provides that when investigations or incidents involve multiple officers, information requiring sustained findings for release must be found against independently about each officer. However, factual information about actions 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.

This bill provides for redaction of records under the following circumstances:

- 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 officers.
- To preserve the anonymity of complainants and witnesses.
- 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 by peace officers and custodial officers.
- 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 officer or another person.

This bill permits a law enforcement agency to withhold a record that is disclosable during an investigation into the use of force by a peace officer until the investigating agency determines whether the use of force violated the law or agency policy. Additionally the agency may withhold a record until the district attorney determines whether to file criminal charges for the use of force. However, in no case may an agency withhold that record for longer than 180-days from the date of the use of force.

COMMENTS

1. Need for This Bill

According to the author:

> SB 1421, benefits law enforcement and the communities they serve by helping build trust. Giving the public, journalists, and elected officials access to information about actions by law enforcement will promote better policies and procedures that protect everyone. We want to make sure that good officers and the public have the information they need to address and prevent abuses and to weed out the bad actors. SB 1421 will help identify and prevent unjustified use of force, make officer misconduct an even rarer occurrence, and build trust in law enforcement.

2. Overview of California Law Related to Police Personnel Records

In 1974, in *Pitchess v. Superior Court* (1974) 11 Cal. 3d 531 the California Supreme Court allowed a criminal defendant access to certain kinds of information in citizen complaints against law enforcement officers. After *Pitchess* was decided, several law enforcement agencies launched record-destroying campaigns. As a result, the California legislature required law enforcement agencies to maintain such records for five years. In a natural response, law enforcement agencies began pushing for confidentiality measures, which are currently still in effect.

Prior to 2006, California Penal Code Section 832.7 prevented public access to citizen complaints held by a police officer's "employing agency." In practical terms, citizen complaints against a law enforcement officer that were held by that officer's employing law enforcement agency were confidential; however, certain specific records still remained open to the public, including both (1) administrative appeals to outside bodies, such as a civil service commission, and (2) in jurisdictions with independent civilian review boards, hearings on those complaints, which were considered separate and apart from police department hearings.

Before 2006, as a result of those specific and limited exemptions, law enforcement oversight agencies, including the San Francisco Police Commission, Oakland Citizen Police Review Board, Los Angeles Police Commission, and Los Angeles Sheriff's Office of Independent Review provided communities with some degree of transparency after officer-involved shootings and law enforcement scandals, including the Rampart investigation.

On August 29, 2006, the California Supreme Court re-interpreted California Penal Code Section 832.7 to hold that the record of a police officer's administrative disciplinary appeal from a sustained finding of misconduct was confidential and could not be disclosed to the public. The court held that San Diego Civil Service Commission records on administrative appeals by police officers were confidential because the Civil Service Commission performed a function similar to the police department disciplinary process and therefore functioned as the employing agency. As a result, the decision now (1) prevents the public from learning the extent to which police officers have been disciplined as a result of misconduct, and (2) closes to the public all independent oversight investigations, hearings and reports.

After 2006, California has become one of the most secretive states in the nation in terms of openness when it comes to officer misconduct and uses of force. Moreover, interpretation of our statutes have carved out a unique confidentiality exception for law enforcement that does not exist for public employees, doctors and lawyers, whose records on misconduct and resulting discipline are public records.

3. Effect of This Bill

SB 1421 opens police officer personnel records in very limited cases, allowing local law enforcement agencies and law enforcement oversight agencies to provide greater transparency around only the most serious police complaints. Additionally, SB 1421 endeavors to protect the privacy of personal information of officers and members of the public who have interacted with officers. This independent oversight strikes a balance: in the most minor of disciplinary cases, including technical rule violations, officers will still be eligible to receive private reprimands and retraining, shielded from public view. Additionally, in more serious cases, SB 1421 makes clear the actions of officers who are eventually cleared of misconduct through the more public,

transparent process. SB 1421 also allows law enforcement agencies to withhold information where there is a risk or danger to an officer or someone else, or where disclosure would cause an unwarranted invasion of an officer's privacy.

SB 1421 is consistent with the goals of enhancing police-community relations and furthers procedural justice efforts set out in the President's Task Force on 21st Century Policing, Action Item 1.5.1: "In order to achieve external legitimacy, law enforcement agencies should involve the community in the process of developing and evaluating policies and procedures."[1]

Permits Limited Public Access to Peace and Custodial Officer Personnel Records

Peace officer personnel records are currently protected under Penal Code 832.7. This legislation provides limited, through the CPRA, to records related to:

- Records relating to reports, investigation, or findings of:
    - Incidents involving the discharge of a firearm at a person by an officer.
    - Incidents involving the discharge of an electronic control weapon at a person by an officer.
    - Incidents involving a strike with an impact weapon or projectile to the head or neck of a person by an officer.
    - Incidents involving use of force by an officer which results in death or serious bodily injury.

- Any record relating to an incident where there was a sustained finding that an officer engaged in sexual assault of a member of the public.

- Any record relating to an incident where there was a sustained finding that an officer was dishonest relating to the reporting, investigation, or prosecution of a crime, or relating to the misconduct of another peace officer, including but not limited to perjury, false statements, filing false reports, destruction/falsifying/or concealing evidence, or any other dishonesty that undermines the integrity of the criminal justice system.

Restrictions on Disclosure

The records released are to be limited to the framing allegations or complaint and any facts or evidence collected or considered. All reports of the investigation or analysis of the evidence or the conduct, and any findings, recommended findings, discipline, or corrective action taken shall also be disclosed if requested pursuant to the CPRA.

Records from prior investigations or assessments of separate incidents are not disclosable unless they are independently subject to disclosure under the provisions of this Act.

[1] In December 2014, President Barack Obama established the Task Force on 21st Century Policing. The Task Force identified best practices and offered 58 recommendations on how policing practices can promote effective crime reduction while building public trust. The Task Force recommendations are centered on six main objectives: Building Trust and Legitimacy, Policy and Oversight, Technology and Social Media, Community Policing and Crime Reduction, Officer Training and Education, and Officer Safety and Wellness. The Task Force's final report is available at: http://www.cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.

When investigations or incidents involve multiple officers, information requiring sustained findings for release must be found against independently about each officer. However, factual information about actions 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.

The bill provides for redaction of records under the following circumstances:

- 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 officers.
- To preserve the anonymity of complainants and witnesses.
- 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 by peace officers and custodial officers.
- 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 officer or another person.

The bill permits a law enforcement agency to withhold a record that is disclosable during an investigation into the use of force by a peace officer until the investigating agency determines whether the use of force violated the law or agency policy. Additionally the agency may withhold a record until the district attorney determines whether to file criminal charges for the use of force. However, in no case may an agency withhold that record for longer than 180-days from the date of the use of force.

4. Secrecy of Police Personnel Records Under Current California Law

The California Public Records Act, provides generally that "every person has a right to inspect any public record," except as specified in that act. As described above, there is another set of statutes that make peace officer personnel records confidential and establish a procedure for obtaining these records, or information from them. The complex interaction between these interrelated statutory schemes has given rise to a number of decisions interpreting various specific provisions.

In August of 2006, the California Supreme Court held in that the right of access to public records under the California Public Records Act did *not* allow the San Diego Union Tribune to be given access to the hearing or records of an administrative appeal of a disciplinary action taken against a San Diego deputy sheriff. (*Copley Press, Inc*. v. *Superior Court*, 39 Cal. 4th 1272 (2006).) The decision by the court, provided that a public administrative body responsible for hearing a peace officer's appeal of a disciplinary matter is an "employing agency" relative to that officer, and therefore exempt from disclosing certain records of its proceedings in the matter under the California Public Records Act. (*Id.*)

> In January 2003, the San Diego Union-Tribune newspaper, learned that the Commission had scheduled a closed hearing in case No. 2003-0003, in which a deputy sheriff of San Diego County (sometimes hereafter referred to as County) was appealing from a termination notice. The newspaper requested access to the hearing, but the Commission

> denied the request. After the appeal's completion, the newspaper filed several CPRA requests with the Commission asking for disclosure of any documents filed with, submitted to, or created by the Commission concerning the appeal (including its findings or decision) and any tape recordings of the hearing. The Commission withheld most of its records, including the deputy's name, asserting disclosure exemptions under Government Code section 6254, subdivisions (c) and (k). (*Id.* at 1279.)

The newspaper then filed a petition for a writ of mandate and complaint for declaratory and injunctive relief. The trial court denied the publisher's disclosure request under the California Public Records Act. The Fourth District Court of Appeal reversed. The California Supreme Court then reversed and remanded the matter to the Court of Appeal.

In reversing and remanding the matter, the California Supreme Court held that "Section 832.7 is not limited to criminal and civil proceedings." (*Id.* at 1284.)

> Petitioner's first argument—that section 832.7, subdivision (a), applies only to criminal and civil proceedings—is premised on the phrase in the statute providing that the specified information is "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." In *Bradshaw v. City of Los Angeles* (1990) 221 Cal. App. 3d 908, 916 [270 Cal. Rptr. 711] (Bradshaw), the court opined that the word "confidential" in this phrase "is in its context susceptible to two reasonable interpretations." On the one hand, because the word "is followed by the word 'and,' " it could signify "a separate, independent concept [that] makes the [specified] records privileged material." (*Ibid*.) "On the other hand," the word could also be viewed as merely "descriptive and prefatory to the specific legislative dictate [that immediately] follows," in which case it could mean that the specified records "are confidential only in" the context of a "'criminal or civil proceeding.'" (*Ibid.*) The Bradshaw court adopted the latter interpretation, concluding that the statute affords confidentiality only in criminal and civil proceedings, and not in "an administrative hearing" involving disciplinary action against a police officer. (*Id. at p. 921*.)
>
> We reject the petitioner's argument because, like every appellate court to address the issue in a subsequently published opinion, we disagree with Bradshaw's conclusion that section 832.7 applies only in criminal and civil proceedings. When faced with a question of statutory interpretation, we look first to the language of the statute. (*People v. Murphy* (2001) 25 Cal.4th 136, 142 [105 Cal. Rptr. 2d 387, 19 P.3d 1129].) In interpreting that language, we strive to give effect and significance to every word and phrase. (*Garcia v.* [1285] *McCutchen* (1997) 16 Cal.4th 469, 476 [66 Cal. Rptr. 2d 319, 940 P.2d 906].) If, in passing section 832.7, the Legislature had intended "only to define procedures for disclosure in criminal and civil proceedings, it could have done so by stating that the records 'shall not be disclosed in any criminal or civil proceeding except by discovery pursuant to Sections 1043 and 1046 of the Evidence Code … ,' without also designating the information 'confidential.' (Pen. Code, § 832.7, subd. (a).)" (*Richmond*, supra, 32 Cal.App.4th at p. 1439; see also SDPOA, supra, 104 Cal.App.4th at p. 284.) Thus, by interpreting the word "confidential" (§ 832.7, subd. (a)) as "establish[ing] a general condition of confidentiality" (*Hemet*, supra, 37 Cal.App.4th at p. 1427), and interpreting the phrase "shall not be disclosed in any criminal or civil proceeding except by discovery pursuant to Sections 1043 and 1046 of the Evidence Code" (Pen. Code, § 832.7, subd. (a)) as "creat[ing] a limited exception to the general principle of confidentiality," we

> "give[] meaning to both clauses" of the provision in question. (*Hemet*, supra, 37 Cal.App.4th at p. 1427.)

The Court goes on to state:

> . . .Bradshaw's narrow interpretation of section 832.7 would largely defeat the Legislature's purpose in enacting the provision. "[T]here is little point in protecting information from disclosure in connection with criminal and civil proceedings if the same information can be obtained routinely under CPRA." (*Richmond, supra*, 32 Cal.App.4th at p. 1440.) Thus, "it would be unreasonable to assume the Legislature intended to put strict limits on the discovery of police personnel records in the context of civil and criminal discovery, and then to broadly permit any member of the public to easily obtain those records" through the CPRA. (*SDPOA, supra*, 104 Cal.App.4th at p. 284.) "Section 832.7's protection would be wholly illusory unless [we read] that statute … to establish confidentiality status for [the specified] records" beyond criminal and civil proceedings. (SDPOA, supra, at p. 284.) We cannot conclude the Legislature intended to enable third parties, by invoking the CPRA, so easily to circumvent the privacy protection granted under section 832.7. We therefore reject the petitioner's argument that section 832.7 does not apply beyond criminal and civil proceedings, and we disapprove *Bradshaw v. City of Los Angeles, supr*a, 221 Cal. App. 3d 908, to the extent it is inconsistent with this conclusion. (*Id.*, *supra*, at 1284-86 (footnotes omitted).)

The court additionally held that the "Commission records of disciplinary appeals, including the officer's name, are protected under section 832.7." (*Id.* at 1286.)

> [I]t is unlikely the Legislature, which went to great effort to ensure that records of such matters would be confidential and subject to disclosure under very limited circumstances, intended that such protection would be lost as an inadvertent or incidental consequence of a local agency's decision, for reasons unrelated to public disclosure, to designate someone outside the agency to hear such matters. Nor is it likely the Legislature intended to make loss of confidentiality a factor that influences this decision. (*Id.* at 1295.)

The Court repeated continuously throughout the opinion that weighing the matter of whether and when such records should be subject to disclosure is a policy matter for the Legislature, not the Courts, to decide:

> Petitioner's appeal to policy considerations is unpersuasive. The petitioner insists that "public scrutiny of disciplined officers is vital to prevent the arbitrary exercise of official power by those who oversee law enforcement and to foster public confidence in the system, especially given the widespread concern about America's serious police misconduct problems. There are, of course, competing policy considerations that may favor confidentiality, such as protecting complainants and witnesses against recrimination or retaliation, protecting peace officers from publication of frivolous or unwarranted charges, and maintaining confidence in law enforcement agencies by avoiding premature disclosure of groundless claims of police misconduct. "… the Legislature, though presented with arguments similar to the petitioner's, made the policy decision "that the desirability of confidentiality in police personnel matters does outweigh the public interest in openness." ... ***[I]t is for the Legislature to weigh the competing policy considerations.*** As one Court of Appeal has explained in rejecting a similar policy argument: "[O]ur decision ... cannot be based on such generalized public policy notions.

> As a judicial body, ... our role [is] to interpret the laws as they are written." (*Id.*, *supra*, 1298-1299, citations omitted, emphasis added.)

5. What Is the Discovery ("*Pitchess*") Process for Obtaining Police Personnel Records?

The California Supreme Court has described the discovery process, also known as a *Pitchess* motion, for a party obtaining information from a police officer's personnel records. This process is an independent method of obtaining very limited access to officer personnel records through an ongoing litigation discovery process.

> In 1978, the California Legislature codified the privileges and procedures surrounding what had come to be known as "*Pitchess* motions" (after our decision in *Pitchess v. Superior Court* (1974) 11 Cal. 3d 531 [113 Cal. Rptr. 897, 522 P.2d 305]) through the enactment of Penal Code sections 832.7 and 832.8 and Evidence Code sections 1043 through 1045. The Penal Code provisions define "personnel records" (Pen. Code, § 832.8) and provide that such records are "confidential" and subject to discovery only pursuant to the procedures set forth in the Evidence Code. (Pen. Code § 832.7.) Evidence Code sections 1043 and 1045 set out the procedures for discovery in detail. As here pertinent, section 1043, subdivision (a) requires a written motion and notice to the governmental agency which has custody of the records sought, and subdivision (b) provides that such motion shall include, inter alia, "(2) A description of the type of records or information sought; and [para.] (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 such governmental agency identified has such records or information from such records."
> A finding of "good cause" under section 1043, subdivision (b) is only the first hurdle in the discovery process. Once good cause for discovery has been established, section 1045 provides that the court shall then examine the information "in chambers" in conformity with section 915 (i.e., out of the presence of all persons except the person authorized to claim the privilege and such other persons as he or she is willing to have present), and shall exclude from disclosure several enumerated categories of information, including: (1) complaints more than five years old, (2) the "conclusions of any officer investigating a complaint . . ." and (3) facts which are "so remote as to make disclosure of little or no practical benefit." (§ 1045, subd. (b).)
>
> In addition to the exclusion of specific categories of information from disclosure, section 1045 establishes general criteria to guide the court's determination and insure that the privacy interests of the officers subject to the motion are protected. Where the issue in litigation concerns the policies or pattern of conduct of the employing agency, the statute requires the court to "consider whether the information sought may be obtained from other records . . . which would not necessitate the disclosure of individual personnel records." (§ 1045, subd. (c).) The law further provides that the court may, in its discretion, "make *any order which justice requires* to protect the officer or agency from unnecessary annoyance, embarrassment or oppression." (§ 1045, subd. (d), italics added.) And, finally, the statute mandates that in any case where disclosure is permitted, the court "shall . . . order that the records disclosed or discovered shall not be used for any purpose other than a court proceeding pursuant to applicable law." (§ 1045, subd. (e), italics added.) (C*ity of Santa Cruz* v. *Mun. Court*, 49 Cal. 3d 74, 81-83 (1989, footnotes and citations omitted.).)

A so-called "*Pitchess* motion" is most commonly filed when a criminal defendant alleges the officer who arrested him or her used excessive force and the defendant wants to know whether that officer has had complaints filed against him or her previously for the same thing. The Supreme Court described the purpose of this discovery process: "The statutory scheme thus carefully balances two directly conflicting interests: the peace officers just claim to confidentiality, and the criminal defendant's equally compelling interest in all information pertinent to his defense." (*City of Santa Cruz* v. *Mun. Court, supra*, at, 84.)

6. Lack of Privacy Interests Exist for Other Public Employees

The secrecy afforded police records stands in contrast to the records of all other public employees of this state, to which the public has a settled right of access to facts about a complaint, investigation and outcome of misconduct.

The standard of mandating disclosure was first set in *Chronicle Publishing v. Superior Court*, where the Court held that "strong public policy" requires disclosure of both publicly and privately issued sanctions against attorneys. 54 Cal.2d 548, 572, 574 (1960). For charges that lead to discipline, the Court held in the 1978 case, *AFSCME v. Regents*, that the disclosure of public employees' disciplinary records "where the charges are found true, or discipline is imposed" is required because "the strong public policy against disclosure vanishes." 80 Cal. App. 3d 913, 918. "In such cases a member of the public is entitled to information about the complaint, the discipline, and the "information upon which it was based." *Id*.

This line of reasoning was affirmed in the 2004 case, *Bakersfield City School Dist. v. Superior Court*, which involved a school official accused of conduct including threats of violence. The Court held that the public's right to know outweighs an employee's privacy when the charges are found true or when the records "reveal sufficient indicia of reliability to support a reasonable conclusion that the complaint was well founded." 118 Cal. App. 4th 1041, 1047. Two years later, in *BRV, Inc. v. Superior Court*, the court went further to require the disclosure of records reflecting an investigation of a high-level official, even as to charges that may be unreliable. The Court found that "the public's interest in understanding why [the official] was exonerated and how the [agency] treated the accusations outweighs [the official's] interest in keeping the allegations confidential," the court concluded. 143 Cal. App. 4th 742, 758-759 (2006).

The reasoning in *BRV* is particularly salient as applied to police shootings: Whether there is reason to infer misconduct or not, the public has a right to know how an agency investigates and resolves questions into serious uses of force.

7. Argument in Support

According to the American Civil Liberties Union:

> California is one of the most secretive states in the nation when it comes to officer misconduct and deadly uses of force. Sections 832.7 and 832.8 of the Penal Code make all records relating to police discipline secret, prohibiting public disclosure through the Public Records Act. Courts have interpreted these provisions broadly, blocking access to any records that could be used to assess discipline, including

civilian complaints, incident reports, internal investigations, and any other records related to uses of force or misconduct.[2]

SB 1421 will pierce the secrecy that shrouds deadly uses of force and serious officer misconduct by providing public access to information about these critical incidents, such as when an officer shoots, kills, or seriously injures a member of the public, is proven to have sexually assaulted a member of the public, or is proven to have planted evidence, committed perjury, or otherwise been dishonest in the reporting, investigation, or prosecution of a crime. Access to records of how departments handle these serious uses, or abuses, of police power is necessary to allow the public to make informed judgements about whether existing processes and infrastructures are adequate. To account for privacy and safety interests, SB 1421 permits withholding these records if there is a risk of danger to an officer or someone else, or if disclosure would represent an unwarranted invasion of an officer's privacy.

Under current law, California deprives the public of basic information on how law enforcement policies are applied, even in critical incidents like officer-involved shootings and when an officer has been found to have committed sexual assault or fabricated evidence. In contrast, many other states recognize that disclosure of records of critical incidents is a basic element of police oversight. Police disciplinary records are generally available to the public in 12 states, including Florida, Ohio, Wisconsin, and Washington, and available to the public under limited circumstances in another 15, including Texas, Massachusetts, Louisiana, and Illinois.[3]

Even in California, this secrecy is not afforded to any public employees other than law enforcement. For all other public employees, disciplinary records are public, and even allegations of misconduct are generally public, as long as the complaint is not trivial and there is reasonable cause to believe it is well-founded.[4] For high-profile public officials, the standard of reliability for allegations is even lower, because "the public's interest in understanding why [they were] exonerated … outweighs [their] interest in keeping the allegations confidential."[5]

In contrast, records relating to even high-profile and controversial killings of civilians by police are kept completely secret by agencies, even though the public's interest in understanding how the agency handled such critical incidents should normally outweigh the officer's privacy interests. Only then can the public properly engage in democratic debate about the way we are policed, the fiscal consequences of police misconduct, and whether the existing processes for preventing and correcting serious abuses by police are adequate.

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[2] *Copley Press, Inc. v. Superior Court*, 39 Cal. 4th 1272, 1286–87 (2006); *see also* Wesley Lowery, *How many police shootings a year? No one knows*, WASHINGTON POST (Sept. 8, 2014), available at http://www.washingtonpost.com/news/post-nation/wp/2014/09/08/how-many-police-shootings-a-year-no-one-knows/.

[3] Lewis, R, N Veltman and X Landen, *Is police misconduct a secret in your state?* WNYC News (Oct. 15, 2015), available at https://www.wnyc.org/story/police-misconduct-records/.

[4] *See Bakersfield City Sch. Dist. v. Superior Court*, 118 Cal. App. 4th 1041, 1044 (2004).

[5] *BRV, Inc. v. Superior Court*, 143 Cal. App. 4th 742, 758 (Ct. App. 2006), *as modified on denial of reh'g* (Oct. 26, 2006).

SB 1421 will honor the public's right to know how police departments deal with officer shootings, beatings, and cases of serious and proven sexual assault and corruption. It will provide the public with the tools to determine whether agencies apply standards consistent with community values, and whether they hold officers who violate those standards accountable. It will allow communities to see systems of accountability at work.

California deserves accountable and transparent decision-making by all government officials, particularly those with the state-sanctioned ability to kill civilians. The ACLU is proud to cosponsor SB 1421 and thanks you for your leadership on this critical issue.

8. Argument in Opposition

According to the Los Angeles County Professional Peace Officer Association:

This bill will significantly undermine the protections of current law for peace officer personnel records. Peace officers take a sworn oath to defend and protect the communities they serve, all while facing extraordinary risks of danger daily. Oftentimes, we forget that those individuals who become peace officers are still public employees who are protected under the California Public Records Act, which assures that disciplinary records are not made public in an unfettered fashion.

Current law already provides for a focused and appropriate access to police officer records through the Pitchess motion process. In contrast to the relevant access of the Pitchess process, Senate Bill 1421 calls for the release of information concerning an officer even where his or her activities are entirely lawful, and entirely within the scope of departmental policy. We are aware of no other area of public employment where an employee's information is made public for conduct that conforms entirely within the scope of departmental policy. Far from building community trust, the release of officer records where the officer has been entirely within policy will give the misperception that there was "something wrong" with the officer's conduct. Again, such release of personnel information – where the conduct in question is totally lawful and within policy is unheard of in any other area of public employment.

Moreover, out reading of Senate Bill 1421 is that making the records of an officer's lawful and in policy conduct is retroactive in its impact. In other words, notwithstanding that the officer's conduct was entirely in policy, his or her records are available for public inspection irrespective of whether or not they occurred prior to the effective date of SB 1421.

The Los Angeles County Professional Peace Officer Association believes that Senate bill 1421 singles out police officers for public opprobrium even where they have behaved entirely within law and agency policy and must respectfully oppose the bill.

-- END –

EXHIBIT F

CRIME - SACTO 911

Sacto 911

19-year-old killed by police showed signs of mental illness after 'very mellow' childhood

BY MOLLY SULLIVAN AND CYNTHIA HUBERT

SEPTEMBER 12, 2018 04:42 PM, UPDATED SEPTEMBER 12, 2018 03:42 PM

An officer-involved shooting that killed a suspect September 6, 2018 at 21st and Broadway left several streets cordoned off. Sacramento officers had to deal with pedestrians and motorists in the area.

By Hector Amezcua | David Caraccio

As the clock ticked toward midnight on a cool September night in Sacramento, a young man wearing a dark hoodie and a medical face mask walked alone along the city's busy Broadway corridor, passing restaurants, bars and bookstores and waving an object that looked like a gun.

The first calls to police dispatchers came around 11:30 p.m. on Wednesday, Sept. 5. A "suspicious subject" was roaming the area.

One caller said a man wearing a mask had pointed a gun at a group standing in front of Dimple Records before moving on, according to dispatch audio recorded by Broadcastify, an online archive. The man walked past Tower Cafe, where callers said he brandished the weapon at a few employees cleaning the restaurant.

The suspect was Darell Richards, 19, who grew up in Elk Grove and, following altercations with a younger brother that resulted in criminal charges, had recently moved in with his grandparents in Oak Park. Family members and friends believed Richards was mentally spiraling, showing signs of paranoia and aggression — a stark change from his mostly quiet and gentle past.

He was scheduled for a psychiatric evaluation, but he ran out of time.

Three hours after police began pursuing Richards that Wednesday night, SWAT team members shot him dead as he crouched under a stairwell in Curtis Park, just a few blocks from where Richards was first spotted on Broadway and 16th Street. Police later determined that his weapon was a pellet gun that resembled a handgun, and that he also was carrying a knife.

The most recent fatal shooting of a young black man by Sacramento police has shaken the community, with some wondering if officers could have subdued Richards without shooting

him dead. Protesters said they intend to confront City Council members Thursday to demand police changes and justice for Richards and others killed by police, including Stephon Clark, whose death in March became a national controversy.

“Every time they kill somebody, we are going to be in their face,” said Tanya Faison, a leader in Sacramento’s Black Lives Matter movement.

Police said that prior to approaching Richards, they sent in K9 officers to help pin down his whereabouts. Officers never engaged in a foot chase with him — unlike in the Clark case — and instead tracked him with a California Highway Patrol airplane crew.

SWAT officers, upon finding Richards in the back of an occupied house, ordered him “to drop his weapon.” When he pointed it at them, officers had no choice but to open fire, police said.

“When a suspect is pointing a firearm at officers, they’re in immediate danger,” said Sgt. Vance Chandler, police department spokesman. “At that point, a less lethal weapon is not an option.”

‘Very mellow’ teenager changed dramatically

Richards leaves a large, tightly knit family and close friends.

“He was a good kid. He was always helpful around the house,” said Aina Eden, his former girlfriend of two years. “He always wanted to make his family proud. I know that for a fact.”

Richards was born in Oak Park but spent part of his childhood in Elk Grove, where he attended Monterey Trail High School before transferring to Hiram Johnson for his junior year, Eden said. He was drawn to music and art, and wrote and recorded his own rap songs. He was rarely seen without his earphones, dancing to different beats. He liked working out in gyms and playing basketball on public courts.

Eden said he enjoyed playing with air guns, such as the replica of a Sig Sauer handgun that he carried the night he died.

“He was still trying to figure out life,” said his older sister, Marlena Lee. After graduating from a continuation school, she said, he became interested in following a cousin and an uncle

into the military. He had already met with recruiters and filled out paperwork, but his plan was derailed by arrests.

The confrontations with his brother were out of character, Lee said. For most of his life, Richards was polite and respectful. “Very mellow,” she said. “He didn’t like loud arguing or confrontation. He tended to laugh things off.”

But something changed within Richards in the past year or so, according to court records and interviews.

His personality changed, and family members and friends began to suspect he was mentally troubled. His unpredictable behavior and eruptions of anger led to the confrontations with his brother, Lee said. The fights led to criminal charges and a restraining order against Richards.

Following the incidents, Richards moved to Oak Park to live with his grandparents. He was staying with them on the last night of his life.

“I did see signs recently that something was wrong,” Lee said. “Darell was not ever violent or argumentative. It wasn’t like him.”

He also seemed paranoid at times, worrying that people were out to get him, friends and acquaintances said.

“We worried about schizophrenia,” Lee said. “We were trying to get him help, but it came a little too late. It’s heartbreaking.”

The first confrontation with his then-15-year-old brother was April 24, according to court records. Police were called to the house after Richards allegedly hit his sibling with a “ceramic bank,” court records and a police report show. Richards was arrested on assault charges. His brother suffered minor injuries.

About a month later, things escalated. Richards allegedly hit his brother on the head with a “wooden club” and fled his family home on foot, according to court records and the police report. His brother was taken to the hospital for treatment.

‘Let’s get you some counseling’

Richards’ mother, Khoua Vang, applied for a domestic violence restraining order against Richards in response. In it, she said her younger son had a concussion from the blow and a bump on his head. She said Richards was “sick in the head to beat up his little brother.”

A warrant was issued for his arrest, and he was taken into custody July 9 by the Sacramento County Sheriff’s Department.

Quoc To, who grew close to Richards and his family while serving as his public defender in the cases, said his client had never been in trouble with the law prior to those incidents and expressed deep remorse for what happened. “Darell loved his brother,” he said, “and his brother loved him.”

At the urging of family members, the lawyer said he filed a petition this summer to appoint a doctor to evaluate his client’s mental condition. Richards was next scheduled to be in court on Oct. 1.

Richards at first resisted the notion that he might be mentally ill, his lawyer said.

“But I told him, ‘Look, Darell, you have the rest of your life ahead of you. Let’s sit down with a doctor, let’s get you some counseling.’”

The lawyer spoke with a psychiatrist, and last Thursday morning phoned his client’s family members to let them know that he had taken that step. He got a devastating reply, he said.

“I was told, ‘The coroner is here right now,’” To said.

‘I heard pow-pow-pow-pow-pow’

Interviews, police reports and court documents fill in the details of what happened in a slice of Curtis Park between railroad tracks and 21st Street the night Richards died.

Shortly before midnight, Candace Schuncke was awakened by a voice from a police loudspeaker.

“Get in your house and lock your doors,” was the command.

“I wasn’t that concerned,” said Schuncke, who lives on 20th Street, just south of Broadway. “Obviously they were looking for someone.” She went back to bed, she said.

While she slept, SWAT and K9 teams began arriving. Police learned that the suspect had fled to the neighborhood and had jumped a fence. They blocked off the area and began searching for him.

Officers caught glimpses of Richards a few times that night as he scrambled between backyards, knocking over garbage cans, according to radio communications.

Around 3 a.m., Schuncke’s two dachshunds began barking hysterically. She peered into her backyard and saw flashlights. Her doorbell rang, and she opened it to find a pair of SWAT officers, heavily armed and in dark uniforms, standing before her.

“They were very polite,” she said. They urged her to remain indoors and continued their search.

About 15 minutes later, “I heard pow-pow-pow-pow-pow, and I thought, ‘I guess they have their man,’” Schuncke recalled. She estimated that she heard 15 to 20 shots.

Later that morning, she saw officers place a backpack and other evidence into plastic bags. She learned that a man had been killed by police while hiding under a stairwell at a house around the corner from her, on First Avenue.

The reality of what she had experienced began to sink in, she said.
“A young man had been shot to death. Couldn’t they have stunned him or shot him in the arm or shoulder? I just felt very sad. It’s a sad situation.”
Lee said the family is gathering information and reserving comment on what happened to Richards in the wee hours of Sept. 6. They did not want to address why he was outdoors at midnight wearing a face mask, or why he was carrying a pellet gun.
On Wednesday they were still in shock, she said, as they planned his memorial service.
“It’s still so unbelievable,” Lee said. “I can’t even put into words what I am feeling right now. I can’t believe my brother is gone.”

LOCAL

Sacto 911

Following Darell Richards shooting, Sacramento police change placement of body cameras on officers

BY THERESA CLIFT

NOVEMBER 12, 2018 04:13 PM, UPDATED NOVEMBER 13, 2018 07:14 AM

At a news conference Monday, Tanya Faison of Black Lives Matter Sacramento demanded Sacramento Police Department change its procedures. Faison was joined by the family of 19-year-old Darell Richards, shot and killed by police in September.

By Theresa Clift

Sacramento police officers are changing the position of their body cameras to minimize accidental shut-offs when officers use their rifles, a police spokesman said Monday.

The change was implemented after police learned that the body cameras of multiple officers were turned off when officers fatally shot 19-year-old Darell Richards in September – including the camera of one of the SWAT officers who fired shots, said Vance Chandler, Sacramento police spokesman.

"(They're) putting them now in a place where the stock of their weapon is less likely to hit the button to turn them off," Chandler said. Chandler said officers were previously wearing the cameras on the center of their chests, where rifle butts were prone to hit the power switch. Now officers who carry rifles will wear cameras off to the side.

The change applies to the department's roughly 15 SWAT officers, as well as all patrol officers who carry rifles, Chandler said.

The department is looking for a long-term solutions to the problem, Chandler said.

Richards' family has filed a claim against the city – a precursor to a federal civil rights lawsuit, said John Burris, the family's lawyer.

Burris, who has litigated several police shooting cases, said he has not heard of officers' weapons turning off body cameras.

"There should not be a situation where typically the best evidence in a case is neutralized because of the video camera's contact with the weapon," Burris said. "It should never

happen.”

Several other departments who buy body cameras from the same company, Axon, have had similar issues, Chandler said.

During a news conference Monday, Richards’ family and Black Lives Matter activists criticized the department for the cameras being turned off. They also demanded the police department release the names of the officers involved, demanded the city fire the officers involved, and demanded the District Attorney’s Office charge the officers. Richards had mental health issues, family members said.

“They had a chance to use other options, for them to arrest him, bring him in alive instead of them just shooting him down the way they did,” said Kathie Richards, Darell’s grandmother. “I still don’t understand why the SWAT team was brought in to the situation.”

The two officers who fired shots were placed on paid administrative leave, in accordance with the department’s policy for police-involved shootings, Chandler said. Both officers are now back on active duty.

The department does not plan to release the officers’ names because the department has received threats against them, but the department will continue to consider it, Chandler said.

The incident began at around 11:30 p.m. Sept. 5 when a 911 caller said a man wearing a face mask was pointing a gun at people while walking up Broadway. Patrol officers found the man near 20th Street and Broadway, and he fled to Curtis Park. Police blocked off streets, used K-9 officers and a California Highway Patrol airplane crew to find him. SWAT officers found Richards hours later crouching under a stairwell in the backyard of a Curtis Park home.

Police said Richards pointed the gun at officers, causing police to fatally shoot him. Afterward, police said they recovered Richards’ gun, which looked like a 9mm handgun but was actually a pellet gun. They said they also recovered a knife.

Police later released video of the incident, which showed Richards had a gun, but did not show where he pointed it.

The police investigation in to the incident is ongoing, Chandler said. The investigation includes determining whether the officers acted according to policy.

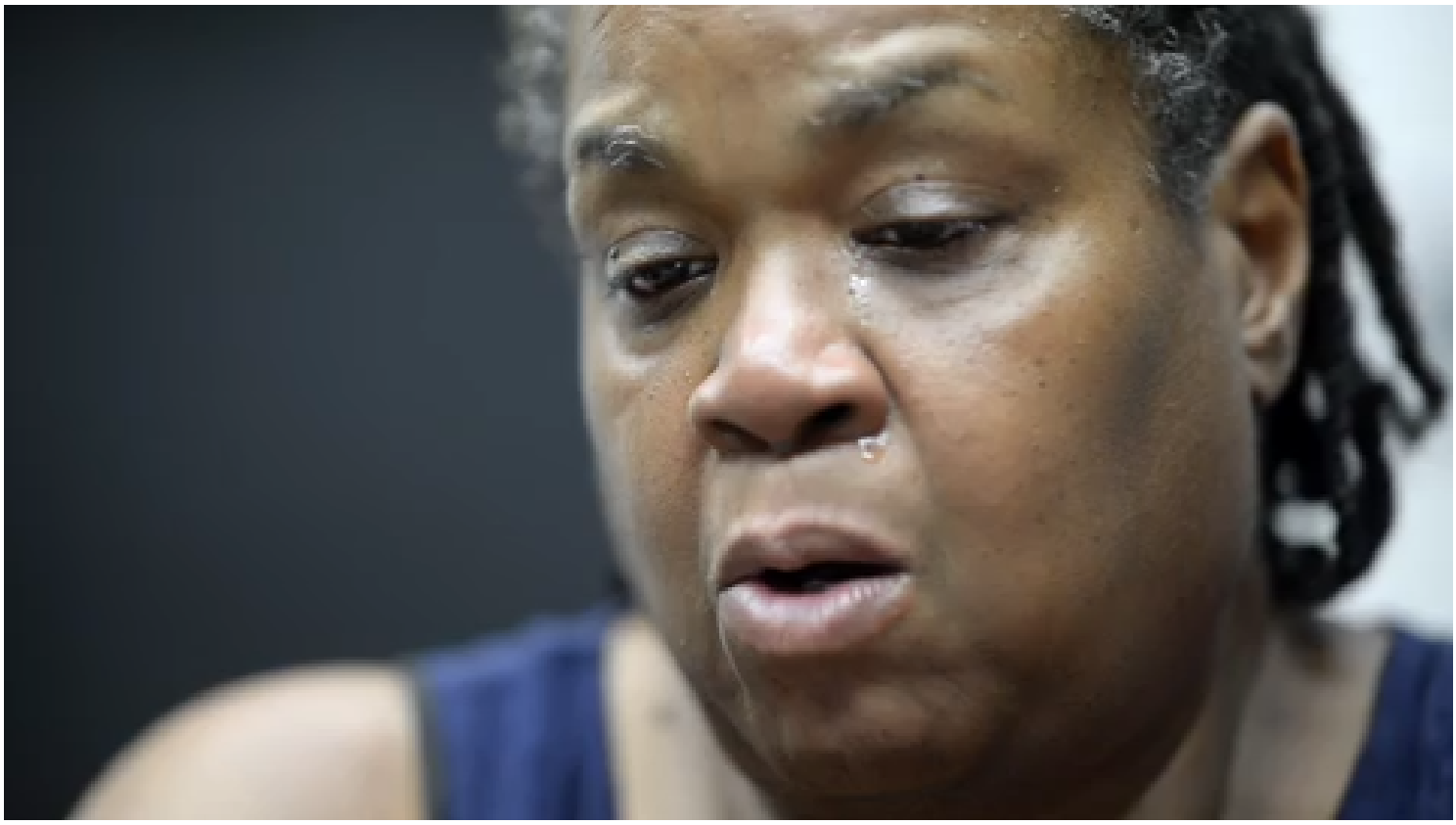
LATEST NEWS

Sacto 911

New details lead to more questions in fatal freeway shooting by Sacramento sheriffs

BY MARCOS BRETON AND ANITA CHABRIA

JULY 19, 2018 03:55 AM, UPDATED JULY 19, 2018 08:59 AM



Brigett McIntrye, mother of Mikel McIntrye, and Sacramento Sheriff spokesman Tony Turnbull describe the incident that led to Mikel's fatal shooting by sheriff's deputies in Rancho Cordova in 2017.
By José Luis Villegas

A Sacramento County Sheriff's deputy fired his weapon 19 times while walking across six lanes of Highway 50 in a fatal officer-involved shooting that is still under investigation more than a year after it occurred.

The new information about the death of Mikel Laney McIntyre, 32, released last week in an annual report from Sacramento County Inspector General Rick Braziel, is raising questions on whether the use of force was justified and why the District Attorney's review is taking so long.

As inspector general, Braziel is responsible for monitoring the Sacramento County Sheriff's Department. His report said three deputies — Gabriel Rodriguez, Ken Becker and Jeffrey Wright — fired 29 shots during an incident with McIntyre on May 8, 2017 that began in a shopping center parking lot off Zinfandel Drive in Rancho Cordova at 6:48 p.m. McIntyre hit deputies and a police dog with rocks during the incident, but was unarmed when the fatal shots were fired.

"It's not right," said his mother, Brigett McIntyre. "It's over excessive."

Sacramento County Sheriff's Department spokesman Shaun Hampton said he couldn't discuss details of the case because of pending litigation. Last month, Brigett McIntyre filed a federal civil rights lawsuit in the case.

Deputies first encountered Mikel McIntyre when responding to a call about an assault in progress outside a Ross Dress for Less store, the report said.

According to Brigett McIntyre, her son was experiencing a mental health crisis and she was the woman the caller had said McIntyre was assaulting.

Twice that day, she said, her family had called 911 because McIntyre appeared to be experiencing a mental health crisis. Both times, Brigett McIntyre said, deputies and medical personnel assessed her son and found he did not qualify for an involuntary psychiatric hold,

despite the family's concerns. But after the second call, deputies told McIntyre to leave his aunt's house, where he and his mother were visiting, she said.

McIntyre later asked his mother to pick him up in the parking lot where the incident began. She said she and McIntyre were arguing over the car keys, which she did not want to give him. She said her son was not attacking her, but she did call for help from passersby.

When Wright arrived, McIntyre ignored verbal commands from the deputy and left the parking lot, according to reports at the time. He crossed the street to a nearby Red Roof Inn. Wright, a Sheriff's deputy on contract with Rancho Cordova, followed and attempted to restrain him.

A "brief struggle started, and McIntyre used a football size rock to strike" Wright in the head, according to the inspector general's report.

Wright was "dazed" and fearful of further assault, and fired two rounds at McIntyre as McIntyre fled toward Highway 50, the report said. It is unclear if McIntyre was hit.

McIntyre ran a few hundred yards, underneath the Zinfandel overpass. He went onto a walkway near the top of the structure, pursued by an unidentified deputy. Below him along the shoulder of the freeway, Becker and his canine also were in pursuit, as were other deputies and California Highway Patrol officers.

At the end of the elevated walkway, McIntyre threw a softball sized rock at Becker as he ran down the embankment and past the deputy, the report said. The rock hit the dog in the muzzle and Becker in the leg.

Becker fired eight shots at McIntyre, who continued to run westbound along the unpaved part of the freeway shoulder. It is unclear if Becker hit McIntyre.

Rodriguez had pulled his patrol car along the center divider of the eastbound lanes of Highway 50 before the Zinfandel Drive overpass, according to the report. Spotting McIntyre under the cement structure, Rodriguez "climbed over the center concrete barrier onto Westbound Highway 50," the report said.

Rodriguez then began crossing the six lanes of traffic, "and while continuing to cross the lanes of traffic fired 19 rounds from his handgun as McIntyre fled away from deputies," the report

said.

Hampton, the department spokesman, said that even though the incident took place at the end of the rush-hour commute, "there was no traffic" at the time Rodriguez fired. Hampton said he was one of the deputies who responded to the incident and "traffic had slowed down at that point."

One driver on a nearby on-ramp filmed a brief video of the incident showing some of the shots fired and gave it to a local news station.

John Burris, the lawyer for Brigett McIntyre and Mikel McIntyre's infant son, questioned if so many shots — 27 in less than a minute — were necessary.

"Even if (deputies) had seen rocks thrown at another person, is that the basis to use deadly force? I don't think so," Burris said.

Burris also said that McIntyre was running away from deputies when they fired, and questioned if he posed an immediate threat to officers or others — one part of the legal standard for using deadly force. He called firing across the freeway "reckless."

"The officer who fired 19 shots, his life was not in immediate danger nor was the life of anyone else," Burris said.

All three officers involved in the shooting are back on active duty, Hampton said.

Police use of force expert Ed Obayashi said he believed Wright and Becker likely were justified in shooting because they may have felt they faced an immediate threat. Obayashi said while he lacked all the details, Rodriguez may have had justification to shoot as well.

"(McIntyre) has committed two serious felonies against a police officer," Obayashi said of the thrown rocks. "(Rodriguez) is not sure how this guy is armed. All he knows is two of his colleagues have discharged their weapons under conditions a reasonable deputy could assume are life threatening."

Obayashi said firing across the freeway — potentially putting drivers at risk — would be a "tactical" issue that would be handled internally by the department. He added that he was not aware of a handgun that could fire 19 bullets without a special clip or the officer reloading.

Sacramento County District Attorney Anne Marie Schubert, whose office is charged with reviewing officer-involved shootings in the region, has not completed her investigation and the office is not close to doing so, said Michael Blazina, assistant chief deputy district attorney.

When asked if the McIntyre review will be finished in this calendar year, Blazina said: "I can't give you an estimate there."

Blazina said the DA's office strives to complete officer involved shooting reviews within 90 days after they receive all the materials related to the investigations from the involved department.

Blazina couldn't say how long the DA's office has been reviewing the McIntyre case. "But it's not uncommon for us to realize that there is some material that didn't come over or witnesses that need to be interviewed," he said. "There are a number of factors that contribute to (a review being delayed) such as the amount of materials involved in a specific case and the case loads of the individuals reviewing them. It's an extensive process and can take additional time."

Sacramento County deputies were involved in nine officer-involved shootings last year in the county, according to Braziel's report. Five of those resulted in fatalities, including the death of Deputy Bob French at a shootout at a local hotel.

Additionally, Sacramento police officers were involved in five officer-involved fatalities last year, according to Sacramento Police Department spokesperson Vance Chandler.

All of those investigations remain ongoing with Schubert's office, according to the District Attorney's website, where concluded investigations are posted. The site contains no investigative reports from 2017 or 2018. The last officer-involved shooting for which a report is available is the November 2016 fatal shooting of Logan Augustine by a Sacramento County Sheriff's deputy. That report is dated Sept. 13, 2017.

Blazina said his office is close to releasing three reviews of use-of-force shootings by county law enforcement officers, and three other reviews are in the final stages of completion.

Braziel also has a full report pending on the McIntyre shooting that has not been released. Typically, the inspector general does not release his findings until after the district attorney.

Brigett McIntyre said the delays are frustrating and has caused her to doubt if she will ever know all the facts around her son's shooting.

"It's been over a year," she said. "Why aren't they talking? Why aren't they saying anything? ... How come they can't just tell me the truth?"

EXHIBIT G

CRIME - SACTO 911

Sacto 911

Police fired 20 times at south Sacramento man fatally shot while holding a cellphone

BY NASHELLY CHAVEZ,
BENJY EGEL, AND
ANITA CHABRIA

MARCH 20, 2018 05:05 PM, UPDATED MARCH 24, 2018 11:57 AM

Sequita Thompson, recounts the harrowing night her grandson Stephon Clark was shot by Sacramento police in her backyard.
By Renée C. Byer

Stephon Clark was holding only his cellphone when he was fatally shot Sunday night by two Sacramento police officers who fired at him 20 times, the department said Tuesday.

Department officials on Tuesday offered more details about what happened in the moments before Clark, 22, encountered officers in the backyard of the south Sacramento home where he was staying with his grandparents.

Clark's family members, meanwhile, flooded his grandparents' spacious, two-story stucco and brick house on Tuesday, demanding answers on what led up to the fatal shooting. His grandmother, Sequita Thompson, pointed from a living room window to the spot where Clark was found.

A few feet away in the dining room, the walls were covered with framed photos of family members, including Clark.

"He was at the wrong place at the wrong time in his own backyard?" Thompson said Tuesday. "C'mon now, they didn't have to do that."

Police arrived at the 7500 block of 29th Street at about 9:18 p.m. Sunday, responding to a 911 call that a man was breaking into vehicles, according to the department. A Sacramento County Sheriff's Department helicopter had also responded.

Deputies in the helicopter reported seeing a man armed with a "tool bar" in a nearby

backyard and began to direct ground officers to that location.

Clark had two sons as well as a younger sister (pictured).
- Stevonte Clark

The airborne deputies said they saw the man use the "tool bar" to break a window, which police later said was the rear sliding glass door in an occupied home on the 7500 block of 29th Street.

Police Tuesday said a cinder block and a piece of aluminum similar to what would be used in a rain gutter were recovered from near the broken door and taken into evidence, though neither item was definitely identified as the "tool bar" seen by deputies in the helicopter.

WARNING: Graphic content. The Sacramento Police Department has released body cam footage of the shooting of Stephon Clark, an unarmed black man, in his grandparents' backyard. This footage is from camera 1. The shooting occurs near the 7:40 mark.

By Sacramento Police Department

The resident at that house, Bill Wong, 88, Tuesday told The Bee that he was unaware of events as they unfolded Sunday night. He didn't hear or see how the window was broken or hear any gunshots, he said. The sliding door had been patched up by Tuesday morning.

"I came out, the police is here already," he said of the night. "They don't tell me (anything)."

Police said that after seeing Clark break Wong's window, the helicopter deputies observed him running south, where he jumped a fence into his grandparents' yard adjacent to Wong's house. He headed toward the front of the property, along the way looking into another car, police said.

On Tuesday, there was a black SUV and a gold Cadillac parked in Clark's driveway.

Clark had been staying with his grandparents in that home on and off for more than a month, his family said. He had been released from county jail about a month earlier, said his brother, Stevante Clark.

A search of Sacramento Superior Court records found four related cases for a Stephan Alonzo Clark. The most recent were two felony counts of domestic abuse, to which Clark – who preferred to go by the name Stephon – pleaded guilty and agreed to complete a treatment program. The court record also shows a 2008 robbery charge, and charges in 2013 for possession of a firearm and possession of a controlled substance.

Lashunda Britt, a cousin of Stephan Clark, said he was probably knocking on the window through the bars to alert his grandfather to use his remote to open the garage door when he was fatally shot by police on Sunday. Renée C. Byer *rbyer@sacbee.com*

Clark's family said their front doorbell was broken and family members would knock on the back window for entrance through the garage door.

Police entered the front yard of Clark's grandparents' house and saw him along the side of the house, according to the original department press release. Police said officers "gave the suspect commands to stop and show his hands," but that he "immediately fled from the officers and ran towards the back of the home."

It was there that police said they pursued Clark and where he "turned and advanced towards the officers while holding an object which was extended in front of him."

Police said officers believed the object was a gun and fired, "fearing for their safety."

No gun was found at the scene. Police later said that object was a cellphone. It was found near Clark's body and taken into evidence.

Thompson, Clark's grandmother, said the object was an iPhone. She said he was also found with a pair of headphones. Clark's girlfriend, Salena Manni, said the phone Clark held belonged to her. She said it was an iPhone 6 Plus in a rose gold-colored case with a black holder on the back to carry items like credit cards.

Department spokesman Sgt. Vance Chandler said each of the two officers involved in the shooting fired 10 shots, for a total of 20 shots fired. Chandler said he did not know how many times Clark was hit.

Clark was pronounced dead at the scene by Fire Department responders.

The two officers involved in the shooting have two and four years with the Sacramento Police Department, and each has an additional four years experience with other agencies.

Chandler said the on-scene investigation had been concluded by Tuesday, but the overall investigation would take longer. Typically, reviews of such officer-involved police shootings take months before a final report is issued. The incident will be investigated by homicide detectives and internal affairs, as is protocol, within the department. The internal investigation will then be reviewed by the city's Office of Public Safety Accountability, which will release a public report of its findings.

Video of the incident will also be released, in compliance with a city policy enacted in 2016 after the officer-involved shooting of Joseph Mann in North Sacramento. That shooting prompted a series of police reforms that included requiring all patrol officers to wear body cameras and to receive increased training in de-escalation techniques.

Mayor Darrell Steinberg on Tuesday said police Chief Daniel Hahn would expedite the release of video captured on body-worn cameras and dashboard cameras. In recent instances, the department has also released relevant audio as well.

Chandler said it would also include footage shot by sheriff's deputies from the helicopter. If so, it would be one of the first times Sheriff Scott Jones has agreed to release video.

A call to the Sheriff's Department to confirm it would release video was not immediately returned.

Sacramento police fatally shot Stephon Clark on Sunday night in his own South Sacramento backyard after responding to a call of a person breaking car windows nearby.

By José Luis Villegas

Advocates in the African American community have voiced concerns over the shooting and how the department will respond to it.

"This is a moment of truth," said community activist Berry Accius. Accius said that many community members are looking to the department to handle this incident with a greater degree of transparency than some feel past police shootings have received.

Hahn, who took over the department following the Mann shooting, has expressed a commitment to transparency and has on several occasions released police footage even though the department was not required to do so. Hahn has also spoken often to community groups about his desire to build trust between the department and communities of color through more collaborative policing and greater transparency.

Accius said some community members question if the shooting was excessive force and want to know "what led up to this young man being killed." He said the Clark shooting is being viewed as a defining moment by many on how far that transparency and accountability will go..

"This is the moment that I think a lot of us have been expecting," said Accius. "This is definitely where transparency, accountability and justice are really going to be put in full display with this new regime of policing. I think a lot of us in the community have been told there will be a whole other way of how the police in Sacramento police the community, especially black and brown people, and this will be the test."

Photographs of Stephon Clark, his girlfriend Salena Manni, sons Aiden Clark, 3, and Cairo Clark, 1, are displayed on a table inside his grandmother Sequita Thompson's home.
Renée C. Byer *rbyer@sacbee.com*

For Clark's family, the concerns are more personal.

They are trying to raise money to bury Clark next to his brother, who was also killed by gun violence. Tuesday, a GoFundMe campaign had raised more than $4,000 toward that goal. Clark leaves behind two sons, 3 and 1 years old.

"They're asking, 'Where's Daddy, where's Daddy?" said Manni, the mother of Clark's children. "He was a part of our family. He was our rock."

Editor's note: This story was changed March 24 to correct the spelling of Clark's first name.

EXHIBIT H

POLITICS

Lawmakers again take aim at California's tight lid on police shooting investigations

By LIAM DILLON
MAR 30, 2018 | SACRAMENTO

Black Lives Matter protesters march in Sacramento this week in response to the police shooting of Stephon Clark. (Josh Edelson / AFP/Getty Images)

After police killed an unarmed black man in Sacramento earlier this month, California legislators are poised to again try to loosen some of the nation's strictest prohibitions on the release of officer shooting and misconduct investigations.

State Sen. Nancy Skinner (D-Berkeley) plans to introduce a bill next week that would require the disclosure of investigations of serious uses of force, including police shootings.

The legislation, which civil rights groups across the state support, is necessary because people have a right to know how law enforcement treats those cases, said Lizzie Buchen, a legislative advocate for the American Civil Liberties Union of California.

“Currently, the public is completely shut out of the entire disciplinary process,” Buchen said. “When an officer kills someone, which is an extreme example of their ability to use force, the public has no way of actually knowing how it was handled by that agency.”

California has some of the most stringent laws against disclosing police personnel records. Most information about discipline is presumed confidential, even when complaints are determined to be valid. California’s rules are so rigorous that last year a state appellate court ruled the Los Angeles County Sheriff’s Department isn’t even allowed to tell prosecutors the names of deputies with confirmed cases of misconduct. The California Supreme Court is now reviewing that case.

Over the years, lawmakers have tried to open up some information. But law enforcement groups have fought back, arguing that disciplinary records should remain private to protect officer safety and limit the sensationalizing of such incidents.

The latest attempt came in 2016 under growing pressure from civil rights activists to respond to disputed police shootings in Ferguson, Mo., San Francisco, Los Angeles and elsewhere. An effort from former state Sen. Mark Leno (D-San Francisco) was shelved in a Senate committee after intense lobbying from law enforcement groups.

No state legislator proposed a bill on the issue last year, and Leno has said the police lobby is so strong that it might take a statewide ballot measure for the law to change.

This year, the union that represents professors and lecturers in the California State University system is supporting Skinner’s bill. Buchen said she expects other labor groups to join, which would broaden the list of organizations that have supported similar legislation.

The latest legislation, which has been planned for months, has taken on new urgency since the March 18 killing of 22-year-old Stephon Clark by Sacramento police, Buchen said. Clark's death has sparked daily protests in the capital city after police shot him in his grandmother's backyard during a vandalism investigation while he was unarmed and carrying a cellphone. Under current law, the Sacramento Police Department investigation won't become public except through any potential criminal prosecution of the officers or civil litigation against the city.

About two dozen representatives from civil rights groups and relatives of those killed by police rallied before a meeting of the state's anti-police racial profiling board in Compton Thursday morning. They called on lawmakers to pass Skinner's legislation and increase police accountability provisions.

"We are going to demand justice," Melina Abdullah, a professor of Pan-African Studies at Cal State L.A. and a member of the Black Lives Matter movement, said at the rally. "We are going to pass this bill as a first step in ending the murders of our people."

Besides opening access to use of force investigations, Skinner's proposed bill would also require the disclosure of confirmed cases of sexual assault and lying while on duty.

Representatives with the California State Sheriffs' Assn., California Police Chiefs Assn. and the Peace Officers Research Assn. of California — the state's largest police labor organization — declined to comment on the legislation. All three groups and two dozen other law enforcement and labor organizations opposed Leno's bill two years ago. Brian Marvel, the labor group's president, said public safety groups planned to meet with Skinner next week.

"We're trying to work with the senator to find some common ground," Marvel said. "We realize the importance of this issue."

Skinner said she wouldn't comment on the bill until she introduces it.

An L.A. County deputy faked evidence. Here's how his misconduct was kept secret in court for years

By CORINA KNOLL, BEN POSTON and MAYA LAU
AUG 09, 2018 | 5:00 AM

They were at the tail end of their overnight shift when they spotted Gerald Simmons near a vacant lot in Inglewood.

The two Los Angeles County sheriff's deputies said they saw the 43-year-old toss a plastic baggie of rock cocaine to the ground.

Their testimony would become the backbone of the 2009 criminal case against Simmons.

After a six-day trial, the verdict was swift. Guilty.

But jurors made their decision without knowing a crucial detail.

Jose Ovalle, one of the deputies who also booked the evidence, had been suspended five years earlier for pouring taco sauce on a shirt to mimic blood in a criminal case. He nearly lost his job.

Ovalle's past was kept secret for years from prosecutors, judges, defendants and jurors, even though he was a potential witness in hundreds of criminal cases that relied on his credibility, according to a Times investigation.

A Times investigation

Aug. 9, 2018

You've been arrested by a dishonest cop. Can you win in a system set up to protect officers?

Aug. 10, 2018

This L.A. sheriff's deputy was a pariah in federal court. But his secrets were safe with the state.

Aug. 14, 2018

One cop came forward to expose secrets in his own ranks. The revelation rocked the court system.

Aug. 15, 2018

Here's how California became the most secretive state on police misconduct

The deputy took the stand in 31 cases before the district attorney's office found out about his misconduct. Once his credibility came into question, prosecutors offered some career criminals generous plea deals in pending cases or dropped charges altogether. Some went on to commit serious crimes.

Ovalle is not an isolated example. Misconduct by law enforcement officers who testify in court is routinely kept hidden by California's police privacy laws.

The U.S. Supreme Court requires prosecutors to inform criminal defendants about an officer's wrongdoing — but the state's laws are so strict that prosecutors cannot directly access the personnel files of their own police witnesses. Instead, California puts the burden on defendants to prove to a judge that an officer's record is relevant.

Times reporters reviewed documents from hundreds of criminal cases in which the district attorney's office identified Ovalle as a potential witness after he was caught faking the bloody evidence in 2003.

Few defendants tried to obtain information about Ovalle's past. A handful of those who did weren't given information about the deputy's discipline. Judges never gave them a public explanation for why it wouldn't have been relevant.

By the time the district attorney's office learned about Ovalle's misconduct, he had been a potential witness against 312 defendants. More than 230 were convicted.

The California Supreme Court will decide whether law enforcement agencies can tell prosecutors if a police witness has a record of serious discipline. (Justin Sullivan / Getty Images)

A Times investigation last year identified Ovalle and others on a secret Sheriff's Department list of deputies whose misconduct included falsely testifying in court, pulling over a motorist and receiving oral sex from her while on patrol, and tipping off a drug dealer's girlfriend about a narcotics bust.

Los Angeles County Sheriff Jim McDonnell wanted to disclose the so-called Brady list of about 300 officers to prosecutors, but the deputies union went to court to stop him.

The state's Supreme Court will soon decide whether McDonnell and other law enforcement agencies can tell prosecutors if a police witness has a record of serious discipline. An appellate court has ruled they cannot.

Ovalle now works as a sergeant in the Sheriff's Department's Century station in Lynwood. Last year, he was paid $240,000 in salary, overtime and other earnings.

When reached by The Times for comment, Ovalle said: “I don’t understand why the L.A. Times is so interested about me.” He declined to comment further and asked not to be contacted again.

‘It was stupidity’

Ovalle’s troubles began in August 2003.

Los Angeles County Sheriff's Deputy Jose Ovalle. (L.A. County Sheriff's Department)

Several gang members at the Pitchess Detention Center in Castaic had slashed an inmate's neck and head with razor blades.

A 26-year-old deputy with just three years on the job, Ovalle was responsible for collecting the evidence and writing the incident report.

When he realized a bloody shirt from one of the suspects had gone missing, Ovalle took a clean one from the jail laundry, topped it with taco sauce and took a photo, according to court and law enforcement records.

A custody assistant watching Ovalle warned him not to do it, but the deputy went ahead and booked the photograph into evidence. The custody assistant reported him to a supervisor, according to court records.

Confronted by sheriff's investigators, Ovalle confessed.

"It was stupidity now that I look back on it," he told the investigators, according to a transcript of his interview obtained by The Times. "This uniform means everything to me, this badge and gun, it's my life. ... I'm embarrassed."

Sheriff's Department officials told Ovalle he would be fired but then relented, noting that he had cooperated with investigators and accepted responsibility, according to internal documents. Ovalle was instead handed a 30-day suspension.

He was ordered to serve 10 of those days and the remainder only if he committed a similar offense within the next five years.

In testimony he gave years later, Ovalle blamed poor training for his conduct and downplayed the significance of what he had done, insisting he hadn't fabricated evidence because the bloody shirt had once existed.

"I don't consider myself a liar," he said.

The Sheriff's Department never notified the district attorney's office about Ovalle's actions to see if he should be charged with a crime, according to law enforcement records. As a result, prosecutors handling cases in which Ovalle was involved had no way of knowing about his past actions.

'Trying to hide misconduct'

Two years after his suspension, Ovalle was transferred to the Sheriff's Department's Lennox station in South Los Angeles, where he made arrests for drug possession, theft and assault and later testified in court.

Defendants who faced him had only one method of possibly learning about his misconduct, a procedure that is itself cloaked in secrecy.

"They are trying to hide misconduct, and everyone should be against it," said David Kanuth, a former Los Angeles County public defender, regarding California's police privacy laws. (Genaro Molina / Los Angeles Times)

Under California's so-called Pitchess laws, defendants can ask a judge to examine an officer's personnel records for allegations of excessive force, dishonesty, theft or other acts of "moral turpitude." Few go through the trouble.

By the spring of 2008, Ovalle had been listed by prosecutors as a potential witness against 125 defendants. Only five tried to delve into Ovalle's background, according to a review of court records.

If a defendant's Pitchess motion is granted, a representative from the officer's law enforcement agency meets with the judge in private to go over relevant complaints. Neither the prosecutor nor the defense attorney is allowed in the room.

If a judge decides to turn over anything, it is usually only the name and contact information of someone who made a complaint against the officer within the last five years.

It is then up to the defense attorney to figure out what happened.

Supporters say the Pitchess laws prevent accused criminals from fishing for information about police witnesses that is irrelevant in their cases.

David E. Mastagni, a Sacramento-based attorney who represents police unions, said most defendants don't file Pitchess motions because "in the vast majority of cases, the officer's credibility is not an issue." If an officer has a history of dishonesty, he said, a judge will almost always disclose it through Pitchess.

"It's a pretty perfect balancing," he said.

But defense lawyers complain that the laws make it difficult for people facing criminal charges to ask for the information. Many of their jailed clients, they say, don't want to spend weeks or months trying to find out whether a law enforcement witness has a history of complaints, especially if they could accept a plea deal that would speed up their release.

"It isn't a defeatist attitude as much as it is a realistic understanding of your client's life," said David Kanuth, a former L.A. County deputy public defender who is sharply critical of the state's police privacy laws. "They are trying to hide misconduct, and everyone should be against it."

Inside a secret 2014 list of hundreds of L.A. deputies with histories of misconduct »

One of the defendants who tried to dig into Ovalle's background was Lamar Dotson. He had been returning to the Acacia Inn in Inglewood from his job as a security officer when Ovalle and his partner ordered him out of his car with guns drawn.

The deputies said they smelled marijuana and found two baggies with the drug. When they discovered a stolen gun in the trunk, Dotson explained he had confiscated it from someone at one of the clubs where he worked.

In court records and an interview with The Times, Dotson insisted the deputies lied about him having marijuana in the car to justify the search. He said he had kept the gun because he had been worried about getting into trouble if he turned the weapon in to authorities.

"I was 29 years old, never been in handcuffs, never been to jail," Dotson told The Times.

Dotson's attorney filed a Pitchess motion asking for the deputies' history of misconduct, including fabricating evidence. The judge denied the motion. The case file and related transcripts have since been destroyed.

Dotson, who had no criminal history, ended up agreeing to a deal in which he pleaded no contest to carrying a loaded firearm and was placed on summary probation for three years. The misdemeanor conviction, he said, prevented him from obtaining a firearm permit for 10 years, hurting his efforts to find work as a security officer and bodyguard.

If he had known about Ovalle's past misconduct, Dotson said, he would have fought harder for his case to be dismissed. But as months slipped by, his family members urged him to acquiesce.

"I was trying to get out of the situation as opposed to making it worse," Dotson said. "It really upset me, to tell you the truth, but what can you do about it at that point? I did what I had to do to keep going forward."

Can you win in a system set up to protect officers? »

Word about Ovalle's misconduct began to spread after he arrested 18-year-old Sergio Martinez on suspicion of possessing methamphetamine in May 2008.

Martinez challenged Ovalle's account of his arrest. His lawyer filed a Pitchess motion seeking any complaints accusing the deputy of fabricating or planting evidence.

Superior Court Judge Hector M. Guzman reviewed Ovalle's personnel records and saw the Sheriff's Department's internal report about the taco sauce incident.

In an unusual move, the judge gave the records to the prosecutor and suggested the district attorney's office decide whether Ovalle should be added to the agency's database of problem officers to alert future defendants.

But that didn't happen.

The prosecutor in the case, William Frank, told The Times he informed a supervisor about Ovalle's misconduct soon after the hearing — just before he started a new job with the state attorney general's office.

"I understood the seriousness of the material even though I was a relatively new lawyer. I knew what it meant for the case," Frank said. "I felt I had done what I was supposed to do."

A district attorney's spokeswoman blamed "a miscommunication among prosecutors."

The charges against Martinez were thrown out.

(California Department of Corrections and Rehabilitation)

Juan Alvarez

- Suspected gang member known as “Demon,” arrested Aug. 10, 2008, by Deputy Jose Ovalle
- Accused of assault with a gun, facing more than a decade in prison
- Filed a Pitchess motion asking for allegations of misconduct against Ovalle
- Not informed that Ovalle had been suspended in 2004 for using taco sauce to mimic blood on evidence in a criminal investigation
- Filed another Pitchess motion saying Ovalle’s discipline was disclosed in a different case
- Accepted plea deal and released from prison eight months later
- Convicted in 10 cases since then, for domestic violence, drunk driving, violating a court order and drug possession

A month later, Ovalle took the stand at a preliminary hearing for Juan Alvarez, a suspected gang member known as “Demon.”

At 31, Alvarez had amassed a criminal record that spanned three states and included arrests for assault, drug possession, driving under the influence and domestic violence, according to court records.

Responding to a report of an armed assault, Ovalle said, he witnessed Alvarez toss a gun from his waistband, then flee down Lennox Boulevard. The deputies recovered a handgun from the scene, Ovalle testified. His misconduct never came up.

Alvarez’s defense attorney, Deputy Public Defender Ethna Burns, filed a Pitchess motion that accused Ovalle of lying in court about the arrest and asked for complaints against the deputy. Superior Court Judge Mark S. Arnold said he would turn over only information related to perjury or planting evidence.

After looking at Ovalle’s file, the judge initially determined there was nothing to disclose.

Burns objected. She demanded evidence about the taco sauce incident, which attorneys had been discussing in the Torrance courthouse.

At a later hearing, Arnold ordered the information be given to Burns and Paul Guthrie, the prosecutor handling the charges against Alvarez. Guthrie notified his office that Ovalle should be added to the district attorney's database of problem law enforcement officers.

Alvarez was facing up to nearly 16 years in prison. A probation officer recommended he serve the maximum sentence if convicted.

"His criminal activity appears to be escalating and he does not appear to have been appreciative of the leniency afforded to him in the past," she wrote in her report.

But after Alvarez learned of Ovalle's wrongdoing, he struck a deal on Sept. 22, 2009, in which he pleaded no contest to carrying a loaded firearm. He was out on parole eight months later.

Alvarez has since been convicted in 10 additional cases, for domestic violence, drunk driving, violating a court order and drug possession.

(Las Vegas Metropolitan Police Department)

Gerald Simmons

- Arrested Jan. 22, 2009, by Deputy Jose Ovalle on suspicion of drug possession
- Filed a Pitchess motion asking for allegations of misconduct against Ovalle
- Not informed that Ovalle had been suspended in 2004 for using taco sauce to mimic blood evidence in a criminal investigation
- Convicted at trial on Aug. 18, 2009
- Judge threw out Simmons' conviction after learning about Ovalle's misconduct
- Convicted in 2013 of intentionally infecting a girlfriend with HIV
- Still in a Nevada prison

A day after Alvarez's plea agreement, another Ovalle case was rapidly crumbling in the same courthouse.

Gerald Simmons, the Inglewood man who had been convicted of cocaine possession after Ovalle and a partner said they spotted him dropping a baggie of drugs, was requesting a new trial.

Months earlier, his attorney, Jennifer Cheng, had filed a Pitchess motion. She alleged that the deputies "intentionally lied about their observations in order to create a case against Mr. Simmons."

Her motion was granted, but the information she was given about the deputies did not mention the taco sauce incident.

Simmons' criminal record dated back two decades and included assault with a deadly weapon, drug possession, attempted robbery and burglary. He had violated parole and probation several times.

After the jury found him guilty, he faced up to 12 years in prison.

But before sentencing, Cheng and the prosecutor learned of Ovalle's misconduct, according to court records.

The judge threw out the conviction. He ruled Ovalle had been a "significant material witness" and that his fabrication of evidence in 2003 went to "the very

heart of this case.”

Less than two years later, Simmons was in Las Vegas when he intentionally infected a girlfriend with HIV, court records show. He was sentenced to up to 12 ½ years in prison.

The 53-year-old was recently denied release. The parole board said his crimes were becoming increasingly more serious.

Gov. Jerry Brown signs landmark laws that unwind decades of secrecy surrounding police misconduct, use of force

By LIAM DILLON and MAYA LAU
SEP 30, 2018 | SACRAMENTO

Orange County Sheriff's deputies prepare for a Donald Trump rally in 2016 near the Anaheim Convention Center. (Irfan Khan / Los Angeles Times)

Gov. Jerry Brown ushered in a new era of transparency in California law enforcement on Sunday, signing two new laws that for the first time give the public

enforcement on Sunday, signing two new laws that for the first time give the public access to internal police investigations and video footage of shootings by police officers and other serious incidents.

The measures begin to undo decades of laws and court decisions that had made California the nation's most secretive state for police records.

"With Governor Brown's signature, California is finally joining other states in granting access to the investigatory records on officer conduct that the public truly has a right to know," said Sen. Nancy Skinner (D-Berkeley), the author of one of the measures, Senate Bill 1421, in a statement.

Here's how California became the most secretive state on police misconduct »

Skinner's bill allows the public to view investigations of officer shootings and other major uses of force, along with confirmed cases of sexual assault and lying while on duty.

The availability of these records will allow the public to press California police departments and elected officials in ways not possible before, said Peter Bibring, director of police practices at the American Civil Liberties Union of California, which was a principal supporter of both bills.

"People have seen there are systematic problems and the police aren't being held accountable — or at least the public isn't aware of it because it's secret," Bibring said. "That's something the public is not willing to ignore."

Legal experts also say SB 1421 could have a significant effect on the state's justice system by allowing broader access to records that could bear on the credibility of a police witness who has a history of discipline for dishonesty or other significant misconduct.

California is the only state in which even prosecutors cannot directly obtain officer personnel files. Under the current system, prosecutors and criminal defendants must navigate a labyrinthine process in court to glean information from those files. The procedure, which requires filing a so-called Pitchess motion, often yields only the name and contact information of a complainant against an officer.

A recent Times investigation into secrecy surrounding law enforcement discipline found that past misconduct by police witnesses, whether alleged or proven, routinely

found that past misconduct by police witnesses, whether alleged or proven, routinely is kept hidden in court as a result of California's confidentiality laws.

An L.A. County deputy faked evidence. Here's how his misconduct was kept secret in court for years

AUG 09, 2018 | 5:00 AM

The new law opens up interview transcripts, evidence and full investigatory reports to the public, prosecutors and defense attorneys alike.

"This is revolutionary," said San Francisco Public Defender Jeff Adachi. "It would unveil what we have been wanting for a long time."

Lara Bazelon, a professor at the University of San Francisco School of Law, said the measure could expose officer misconduct that was long withheld from defendants and could lead to numerous convictions being dismissed.

"We are going to see a lot of skeletons falling out of the closets dating back years, if

not decades. That means people who were convicted unjustly and unfairly will finally get a chance to be heard," Bazelon said.

Contra Costa County prosecutors tossed 19 convictions in 2016 and 2017 after a police lieutenant revealed to a judge that files showing internal investigations into two officers had not been disclosed in criminal cases featuring the officers.

California's rules prohibiting the public release of law enforcement records date back four decades. At the time, police unions and other law enforcement officials were complaining that criminal defense attorneys had flooded departments with requests for complaints against officers. Before the 1978 law was passed, the Los Angeles Police Department shredded four tons of prior complaints against officers that hadn't resulted in a finding of wrongdoing.

In previous years, law enforcement labor groups waged aggressive campaigns to successfully shut down attempts to loosen the state's police confidentiality laws.

Police unions opposed SB 1421 as well. Brian Marvel, the head of the Peace Officers Research Assn. of California — the state's largest law enforcement labor organization — said he worried the new disclosure rules would put officers at risk. Earlier this year, protesters angry over the killing of Stephon Clark, an unarmed black man in Sacramento, gathered at the wedding of a police officer after identifying him as one of the officers who shot Clark, and Marvel said releasing more information about officers could lead to more confrontations that could turn violent.

"There would be a greater potential for officers and their families being harmed by having all of their information being put out publicly," Marvel said.

Labor officials had used similar arguments in the past to defeat transparency proposals. But Marvel said their position wasn't as effective this year because public opinion has shifted against officers, pressuring lawmakers to act differently. Legislators and civil rights activists similarly have cited the rise of the Black Lives Matter movement and increased scrutiny on police killings of civilians as reasons why SB 1421 passed when prior attempts at changing the transparency laws failed.

Brown signed the original 1978 police confidentiality law during his first term in office. He did not issue a statement after signing the bill, and a spokesman declined to comment on the decision.

Besides the open records law, Brown signed a second measure, Assembly Bill 748, requiring departments statewide to release body-worn camera and other video and audio recordings of officer shootings and serious uses of force within 45 days unless doing so would interfere with an ongoing investigation.

This law, modeled after a new LAPD policy on releasing body-camera video, makes California's rules for releasing footage some of the most transparent in the country, according to research by Reporters Committee for Freedom of the Press.

The body-camera law also breaks a long stalemate in the Legislature over setting statewide rules on releasing the police recordings. Multiple proposals in recent years either to make the videos public or limit access had failed before AB 748.

"Public access to body camera footage is necessary to boost confidence and rebuild trust between law enforcement and the communities they serve," said Assemblyman Phil Ting (D-San Francisco), the bill's author, in a statement.

The new transparency laws could spur more efforts to increase public access to policing records in the state. Marvel, the police union leader, said he'd like to release body-camera footage of day-to-day interactions officers have with community members, such as typical traffic stops, so that the public has a better sense of what regular policing is like.

"If the only thing we're releasing is negative contacts with people, then that becomes the narrative," Marvel said.

The new open records law takes effect Jan. 1. The body-camera law won't be implemented until July 1 to give police departments more time to update their policies on disclosure.

Coverage of California politics »

5:45 p.m: This article was updated with comments from the bills' authors and additional information about the governor's decision.
This article was originally published at 5:25 p.m.

MUST READS POLITICS

Here's how California became the most secretive state on police misconduct

By LIAM DILLON
AUG 15, 2018 | SACRAMENTO

Former state Sen. Gloria Romero introduced a bill more than a decade ago that would have allowed the public to access police discipline hearings and some records. It was defeated in the face of fierce opposition from police unions. (Myung J. Chun / Los Angeles Times)

In the 1970s, Los Angeles police officers were furious that past complaints against them increasingly were making their way into court cases.

So LAPD officials did something radical: They took more than four tons of personnel records dating to the 1940s and shredded them.

That decision resulted in the dismissal of more than 100 criminal cases involving officers accused of wrongdoing whose records had been purged, sparking public outrage.

The Legislature responded by passing a law that ensured officer discipline records would be preserved — but also made it nearly impossible for anyone to learn about them. The action, driven by police unions, began a decades-long process that has made California the strictest state in the nation when it comes to protecting police confidentiality.

That could change in the next few weeks, with lawmakers in Sacramento considering a landmark effort to increase disclosure.

A Times investigation

Aug. 9, 2018

An L.A. County deputy faked evidence. Here's how his misconduct was kept secret in court for years.

Aug. 9, 2018

You've been arrested by a dishonest cop. Can you win in a system set up to protect officers?

Aug. 10, 2018

This L.A. sheriff's deputy was a pariah in federal court. But his secrets were safe with the state

Aug. 14, 2018

One cop came forward to expose secrets in his own ranks. The revelation rocked the court system.

Repeated efforts to open access to misconduct records have run into aggressive opposition from the unions, one of the most powerful political forces in the Capitol and city halls around the state. Lawmakers who championed transparency faced threats of union opposition at election time.

Police unions repeatedly have argued that California's confidentiality rules protect officer safety and privacy — and prevent cops' names from being dragged through the mud.

But this year, a group of California legislators is confronting police unions in ways once unthinkable. They argue the organizations are out of touch with public sentiment over how officers use force and interact with communities of color. The shift comes amid the backdrop of the Black Lives Matter and criminal justice reform movements.

"It's hard to build trust … when police keep secret how they respond to killing members of the public and hide serious misconduct," said Peter Bibring, director of police practices at the American Civil Liberties Union of California.

The latest proposal to make some misconduct records public faces a key decision in the Legislature this week. While passage is far from assured, some union leaders privately are conceding that a measure of disclosure might be inevitable.

Robert Harris, a director for the union that represents rank-and-file LAPD officers, said high-profile videos capturing police using force — and the protests that followed — have put his side on the defensive.

"We're kind of at the table trying to work with them, not because of the validity of their arguments but because we're watching this movement create some hostility in our communities," Harris said. "The profession of law enforcement is under siege."

No other state has locked away citizen complaints and internal investigation files like California.

Records of misconduct that results in suspensions and other significant discipline are public in 21 states. Only California, Delaware and New York have specially enshrined confidentiality laws that single out police disciplinary files. California is

(Los Angeles Times)

alone in denying prosecutors direct access to the records.

A Times investigation found that past misconduct, whether alleged or proven, routinely is kept hidden in court as a result of California's police privacy laws.

The road to secrecy began in 1974, when the California Supreme Court ruled that defendants had a right to know about complaints that had been lodged against officers testifying in their cases. Defense attorneys started asking for information that might cast doubt on officers' testimony.

It was during the barrage of requests that the LAPD destroyed complaints dating to 1949 that hadn't resulted in a finding of wrongdoing. The leader of the Peace Officers Research Assn. of California, or PORAC — the state's largest law enforcement labor organization — complained that criminal defendants could now "embark on fishing expeditions into peace officers' personnel files."

First-term Gov. Jerry Brown, left, appears with California Atty. Gen. Evelle Younger on NBC's "Meet The Press" in 1978. Younger was the principal backer of the police confidentiality bill that Brown signed into law the same year. (Associated Press)

In 1978, state Atty. Gen. Evelle Younger sponsored the legislation that required departments to keep misconduct records but also expressly blocked public access and made it much more difficult to view them in criminal court.

Under the bill, defendants would have to persuade a judge to examine an officer's confidential file, in private, and decide if there was relevant information to disclose.

The Legislature passed the measure unanimously, sending it to Gov. Jerry Brown, then in his first term, who signed it.

Later that year, after Brown won reelection, his chief of staff credited law enforcement as one of most significant endorsements that led to his victory.

After the law took effect, a slice of police misconduct records remained available to the public.

In Los Angeles, Oakland, San Francisco and other major cities, civil service commissions or police review boards considered officer discipline issues in open hearings. In 2006, the California Supreme Court ruled that the confidentiality law also applied to those hearings.

As a state senator, Gloria Romero repeatedly tried to pass legislation to loosen restrictions on police disciplinary records but was stymied by police unions. "It's a pack. Like wolves coming at you," she said. (Myung J. Chun / Los Angeles Times)

That prompted Sen. Gloria Romero, a Democrat from Los Angeles, to introduce a bill to reopen disciplinary hearings and make some police records directly available to the public.

Law enforcement unions fiercely opposed what they described in letters to lawmakers as an attempt to undermine their “sacred” right to privacy.

John Stites, a union leader from Southern California, warned in an email to a lobbyist that if the bill passed, police would try to defeat a ballot measure seeking to extend the time some legislators could remain in office.

“There is no compromise on this. Ensure it be understood that this will only be the beginning,” Stites wrote in the message, which quickly made its way to lawmakers.

At a hearing for Romero’s bill in the Assembly Public Safety Committee, law enforcement officials filed into the committee room’s front rows — seats typically reserved for legislators and their staffs. So many police officers and lobbyists stood to express their opposition that the line extended out the door.

Ron Cottingham, then head of the law enforcement union PORAC, told the committee that Romero’s proposal was “one of the most insidious and dangerous bills we’ve seen come along in many years and maybe decades in Sacramento.”

The bill died without a vote.

The following year, Romero tried and failed again.

She said in a recent interview that the experience showed her why police unions are so feared in the Capitol.

“It’s a pack. Like wolves coming at you,” Romero said. “Other [legislators] see it, and you’re basically like meat thrown to the lions.”

Mark Leno, left, talks with Lou Correa at the Capitol when both men served in the state Senate. Leno twice proposed police transparency bills that failed when police unions opposed them. (Rich Pedroncelli / Associated Press)

Around the time of Romero's first bill, Assemblyman Mark Leno (D-San Francisco) introduced a similar proposal. It failed to win enough support to merit even a committee vote.

A year later, in 2008, Leno was running for the state Senate when opponents set up a political action committee called Protect Our Kids that ran ads attacking his votes to cut education spending. San Francisco's police union, which was critical of Leno's unsuccessful bill, was one of its top donors.

The lawmaker, who is openly gay, said he considered the committee's name to be a clear reference to homophobic stereotypes about gay men as child predators.

"That's how they play," Leno said. "You come after us, we'll come after you."

San Francisco police labor officials did not return calls for comment. At the time, a union leader told reporters they were upset about Leno's votes on public safety

and education issues.

Leno won the election but waited until his final year in the Senate before introducing a new police transparency bill in 2016.

The timing followed the rise of the Black Lives Matter movement and the 2014 killing of Michael Brown, a black teenager shot by a white officer in Ferguson, Mo.

Even so, the bill quickly died in a Senate fiscal committee.

“It was just too hot,” Leno said.

State Sen. Holly J. Mitchell at the Ronald Reagan State Building in Los Angeles. Mitchell told lobbyists for police unions this year that they were out of touch with public sentiment about law enforcement. (Gary Coronado / Los Angeles Times)

Two years later, a hearing on the latest disclosure bill showed how far the tone surrounding police issues has changed in the Capitol.

Sen. Holly J. Mitchell (D-Los Angeles) told union lobbyists in April that they were out of touch with how communities perceived officers. No longer, she said, would

the unions always get their way.

Her warning came less than a month after protests erupted near the Capitol in the wake of the fatal shooting of Stephon Clark, an unarmed black man, by Sacramento police.

Senate Bill 1421 would open records from investigations of officer shootings and other major force incidents, along with confirmed cases of sexual assault and lying while on duty. The bill must clear an Assembly fiscal committee this week en route to passage in the Legislature by the end of August, when lawmakers break for the year.

Its author, Sen. Nancy Skinner (D-Berkeley), has argued lawmakers must heed calls from black and Latino residents who want to know what happens to officers they accuse of misbehavior.

Police unions complain the measure would increase government costs and prompt a flood of court filings by inmates seeking release once a law enforcement witness' past dishonesty is revealed. Knowing internal investigations will be disclosed, they say, also could lead some officers to hesitate during violent confrontations, endangering their lives.

"It has unintended consequences that are extreme and will hurt the public," Ed Fishman, an attorney with PORAC, said at the April hearing.

Unlike in years past, the unions say they're willing to negotiate.

Brian Marvel, current president of PORAC, said he could see the state's rules changing in cases in which officers were found to have committed serious misconduct. "I'm not opposed to opening records," he said.

As public scrutiny of police conduct has increased, unions also have experienced setbacks at the ballot box. In recent years, statewide voters approved several justice reform measures despite law enforcement opposition, including initiatives to unwind the state's strict three-strikes sentencing law and reduce punishments for low-level thefts and drug offenses.

Still, the law enforcement lobby remains highly influential and the bill's future uncertain.

Endorsements from police groups still are highly coveted by lawmakers fearful of opponents labeling them as soft on crime. Over the last decade, those unions have contributed more than $145 million to statewide ballot measures as well as legislative, gubernatorial and other statewide races, according to a Times analysis of campaign finance data. They've spent an additional $18 million on lobbying and other efforts to influence policy at the Capitol.

Assemblywoman Lorena Gonzalez Fletcher (D-San Diego), who worked closely with police unions as a labor leader before being elected in 2013, heads the fiscal committee that will consider the bill this week.

Gonzalez Fletcher said she strongly supports protecting officers' privacy. But she agrees that the conversation surrounding policing issues has changed.

In her district, which encompasses southern San Diego and stretches to the Mexican border, she's noticed more complaints from Latino residents that police are treating them unfairly.

"Transparency is necessary," Gonzalez Fletcher said. "We have to do something in order for communities like mine to gain trust in police again."

Times staff writers Ben Poston, Mini Racker, Maloy Moore and Jack Leonard contributed to this report.

One cop came forward to expose secrets in his own ranks. The revelation rocked the court system

By MAYA LAU
AUG 15, 2018 | PITTSBURG, CALIF.

Wade Derby was a lieutenant at the police department in Pittsburg, Calif., when he revealed to a judge that an officer who was expected to testify in a murder case had resigned amid a misconduct investigation. (Josh Edelson / For The Times)

Pittsburg Police Officer Michael Sibbitt was ready to testify in a murder trial when a lieutenant from his own department rushed to the courthouse to reveal a startling secret.

The lieutenant told the court that the officer had resigned more than a year earlier during an investigation into whether he had falsified reports and used excessive force.

Details about allegations against Sibbitt and his partner had not been disclosed in more than a dozen other criminal cases in which the officers had made arrests.

The revelation in a Contra Costa County courthouse in 2015 had a sweeping effect: Nineteen convictions secured with help from the two officers were dismissed after prosecutors learned of the misconduct investigation.

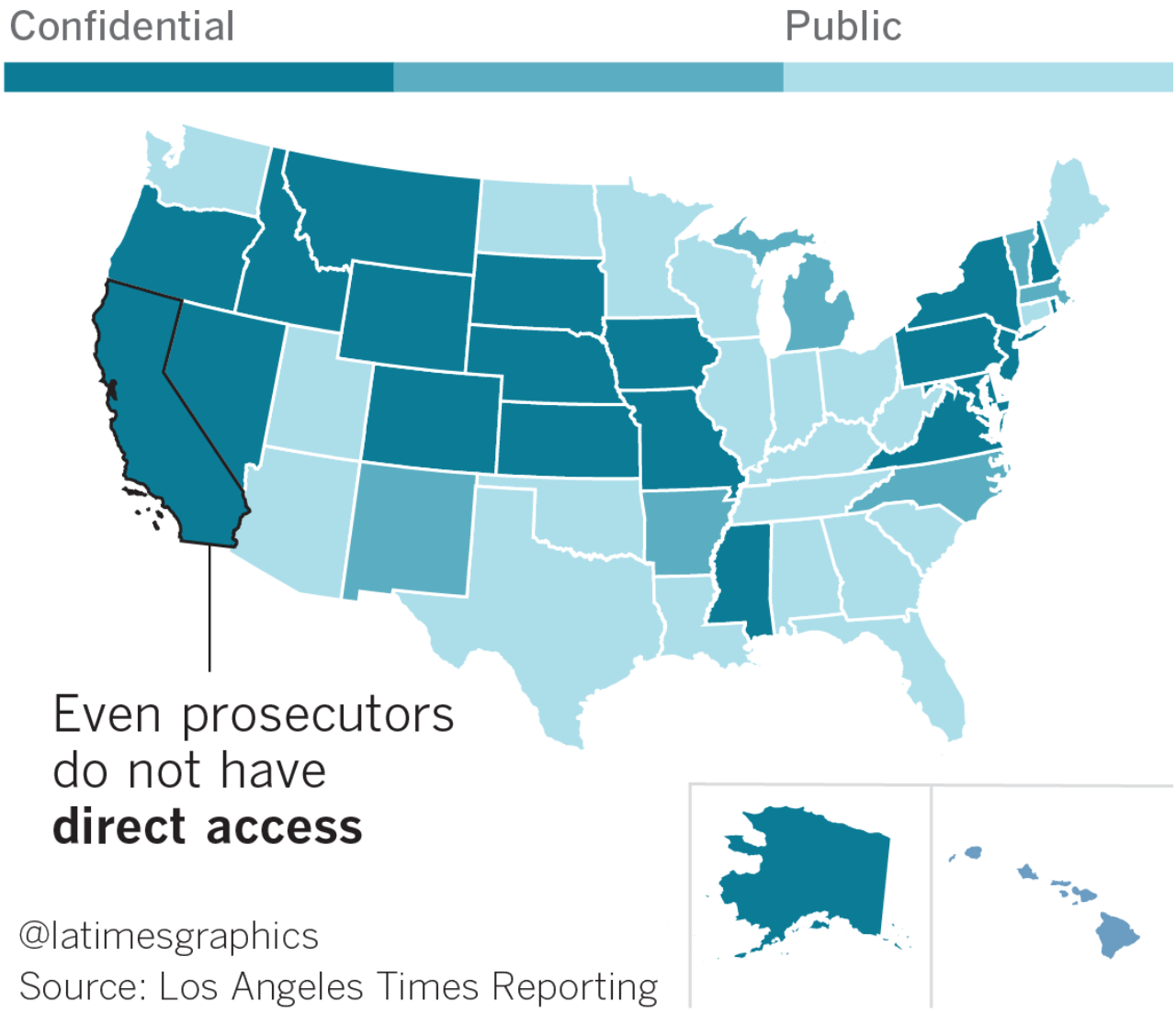
The incident rocked the criminal justice system in this Bay Area suburb and showed how information from officers' confidential disciplinary files can change the outcome of cases — if courts are made aware of the material.

The case was unusual because the lieutenant took it upon himself to reveal the officer's background. Most of the time, getting this information into court is a convoluted process that often leaves judges, attorneys and jurors in the dark about misconduct by officers who take the stand in criminal proceedings.

"It's one of the more stark examples of why we need to have more transparency about police officers' backgrounds," Laurie Levenson, a former federal prosecutor who teaches criminal law at Loyola Law School, said about the case.

Internal records of police misconduct are confidential in California, but state law allows judges to order police agencies to bring personnel files to court if an officer's credibility is formally challenged.

Judges, who review the files privately with only a representative from the police agency, rely on departments to present them with complete and accurate documents. Unlike in open court, where lawyers can argue about evidence, prosecutors and defense attorneys are not allowed to review the records with the judge.



(Los Angeles Times)

This is not how much of the country operates. In 21 states, records of significant police discipline are public. In many others, prosecutors and defendants are able to access them, eliminating the need for a judge's private review.

A Times investigation

Aug. 9, 2018

An L.A. County deputy faked evidence. Here's how his misconduct was kept secret in court for years.

Aug. 9, 2018

You've been arrested by a dishonest cop. Can you win in a system set up to protect officers?

Aug. 10, 2018

This L.A. sheriff's deputy was a pariah in federal court. But his secrets were safe with the state.

Aug. 15, 2018

Here's how California became the most secretive state on police misconduct

But California is the only state in which even prosecutors cannot directly access the personnel file of a police witness. State lawmakers are weighing a proposal this month that would allow the public to see some law enforcement misconduct records.

The police lieutenant in Pittsburg, Calif., a small industrial city 34 miles northeast of San Francisco, said he decided to inform a judge after learning that his department had not given the court information about Sibbitt and his partner in other cases.

The lieutenant, Wade Derby, knew about the investigation because he'd been the one to conduct it. The officers resigned before his inquiry was finished, but months later, some of the people whom the cops had arrested were still facing trial.

When judges ordered the Pittsburg Police Department to show them evidence of wrongdoing in the officers' files, the agency did not bring documents from Derby's investigation, court records show.

Derby raised concerns in memos to his chief that the department wasn't revealing the evidence and could be violating the law. He said he was prepared to tell the court himself.

"My whole career I have tried to stand up against wrong, and sometimes it was going on in my own place" of work, he said.

Pittsburg Police Chief Brian Addington acknowledged that his agency failed to properly disclose the documents, but he said the omission was unintentional. He declined to answer additional questions.

Document

"If we do not disclose this information we will likely compromise or have a criminal conviction on a domestic violence homicide case overturned. In addition there will likely be civil ramifications from the victim's family. Finally, I believe we will bear possible criminal culpability for violating State and/or Federal laws for nondisclosure."

— Memo by former Pittsburg Police Lt. Wade Derby

SEE THE DOCUMENT ↗

Sibbitt and his partner, Elisabeth Terwilliger, filed a lawsuit denying they used excessive force and accusing a department supervisor of ordering them to write reports that left out details about hitting suspects with flashlights. They said the department forced them out after Sibbitt complained that the agency required officers to falsely downgrade reports of serious crimes to misrepresent its crime statistics.

In court papers, the department denied the officers' claims, but it later agreed to pay them $47,500 each. The city said it would note in their personnel files that the internal affairs investigation was never completed and that "no negative findings were ever made," according to a copy of the settlement agreement. The officers agreed they would never work for the city again.

The agreement, which includes a confidentiality clause, was not disclosed by the city until Wednesday, a day after this article was originally published online.

Sibbitt declined to speak about the case; Terwilliger did not respond to requests for comment.

‘My flashlight is getting to play’

Sibbitt had been a cop for five years when he began mentoring Terwilliger, a rookie officer.

Derby, the internal affairs lieutenant, found troubling messages on the officers’ patrol car computers.

Sibbitt sometimes wrote advice to Terwilliger, teaching her how to instigate high-speed chases and find people to arrest, according to internal department chat messages obtained by The Times.

“Just drive with your lights on back and forth on Leland until you get a vehicle that doesn’t yield and takes off on you. Totally illegal but it works,” he wrote to her in late 2013 from his patrol car computer.

A few months later, he warned the officer not to attribute that type of advice to him. Terwilliger replied: “I’ll just call it fishing. Officer Sibbitt taught me to fish.”

Document

"JUST DRIVE WITH YOUR LIGHTS ON BACK AND FORTH ON LELAND UNTIL YOU GET A VEHICLE THAT DOESNT YIELD AND TAKES OFF ON YOU. TOTALLY ILLEGAL BUT IT WORKS"

— Message sent on patrol car computer by former Pittsburg Police Officer Michael Sibbitt

SEE THE DOCUMENT ↗

On April 26, 2014, Terwilliger said she wanted to watch a police dog “gnaw on someone.” But the dog was not available, Sibbitt replied.

“Maybe a flashlight party is in order?” she wrote. “U have to teach me that good flashlight work.”

The next night, Sibbitt struck a boy with his flashlight as Terwilliger struggled with the suspect, according to court records. The juvenile, who officers thought

was armed, had an unloaded BB gun.

Some departments warn officers against hitting people with flashlights because they can inflict more severe injuries than batons.

“Two weekends in a row my flashlight is getting to play,” Sibbitt wrote his partner about an hour after the incident.

“Good flashlight work kid,” replied Terwilliger, whose last name was Ingram at the time.

The officers failed to document that they hit people with flashlights on two occasions, according to a Pittsburg police memo filed in court. The department launched internal-affairs and criminal inquiries into whether they used excessive force and lied on reports.

Their badges and guns were seized on June 18, 2014. They resigned six weeks later.

Messages sent by a police officer in Pittsburg, Calif., from his patrol car computer led to an investigation into excessive force and false reporting. (Josh Edelson / For The Times)

None of this was told to judges or the people who were still facing trial after being arrested by Sibbitt and Terwilliger.

In one case, Terwilliger took the witness stand against a man she had arrested on suspicion of possessing drugs and a firearm but never mentioned that she had been placed on leave two days earlier.

Terwilliger testified that Carl Schoppe was combative and made evasive movements near his car when she approached him. She found a glass pipe in his pocket and discovered a pistol and baggies of powder that turned out to be methamphetamine in the vehicle.

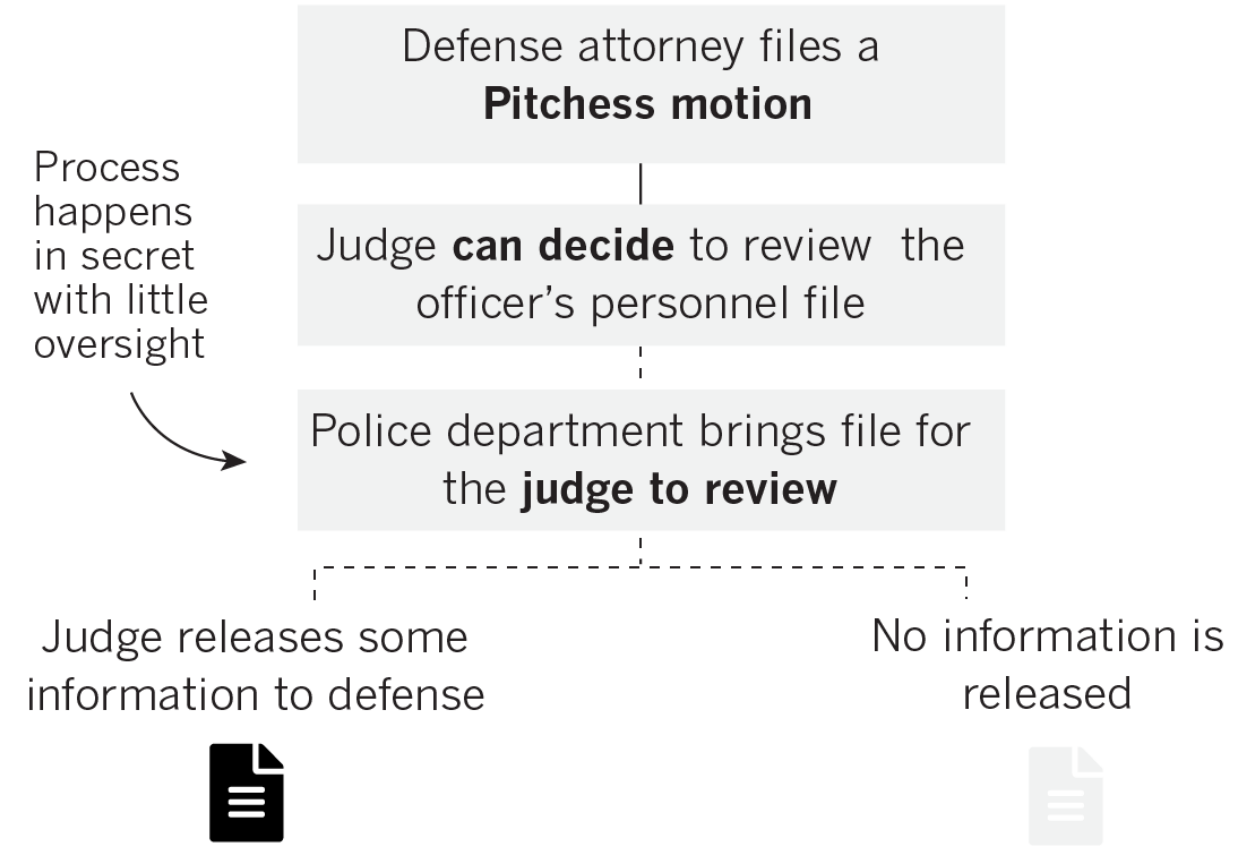
Schoppe accused the officer of lying, saying that he had never made any furtive movements and that he had cooperated with Terwilliger from the start. His girlfriend, who was in the car at the time, said the weapon was hers, not Schoppe's.

Schoppe filed a so-called Pitchess motion asking a judge to review any potential evidence of misconduct in Terwilliger's file.

After granting the motion, the judge ordered a police representative to bring the officer's internal affairs file to a judge for a private viewing.

Under the law, if a judge determines that some of an officer's file is relevant to the case the court may release some information, but the documents are not entered into the public record.

How officer personnel files can be accessed in California state court



(Los Angeles Times)

Police advocates say the process is necessary to balance an officer's right to privacy against a defendant's right to a fair trial. Robert Rabe, an attorney who represents several police associations in California, said that the 1978 law that created the Pitchess system has "stood the test of time" and that problems are rare.

"The great majority of the men and women in law enforcement … comply with Pitchess requests and provide what's necessary," he said.

But in Contra Costa County, the Pittsburg Police Department failed to deliver the documents about Sibbitt and Terwilliger after judges had ordered the files be brought to court. Judges had no way of knowing there were, in fact, relevant records that should have been handed over.

Schoppe's Pitchess motion yielded no records on Terwilliger. He pleaded no contest to being a felon in possession of a firearm and was sentenced to 16 months in prison.

Two other defendants who filed Pitchess motions also entered pleas after judges said there was nothing to disclose about Sibbitt or Terwilliger.

They were among the 19 defendants whose convictions depended on the word of the two officers.

Priscilla Cardenas was eating at a Salvadoran restaurant in Pittsburg in 2013 when a waitress called the police on her. The waitress, who'd been a victim of an armed robbery at a food stand months earlier, said she recognized Cardenas as one of her attackers.

Sibbitt responded to the call and showed up at the restaurant. He spoke to the waitress, wrote down Cardenas' contact information and issued a police report of the encounter.

Priscilla Cardenas says that after being arrested and convicted, she's had difficulty finding jobs and stable places to live. (Josh Edelson / For The Times)

Cardenas, then a 21-year-old community college student with a clean record, was later arrested and accused of using a handgun and a knife in the taco truck robbery — an offense that carried a maximum seven-year sentence.

Cardenas claimed she was innocent and had been four hours away in Bakersfield at the time of the robbery. The waitress said the robber spoke fluent Spanish with a Salvadoran accent. Cardenas, a California native, said she does not speak Spanish well.

Cardenas' attorney said no one notified her of any reason to distrust Sibbitt, so she didn't file a Pitchess motion seeking background on the officer.

Sibbitt testified at Cardenas' trial, six months after he had resigned from the Police Department and four months after he had taken a job as a Macy's loss-prevention officer. He told the jury the waitress was "shaking" and "stuttering" upon seeing Cardenas at the restaurant. That testimony helped convict Cardenas in February 2015.

She was sentenced to three years in prison.

It would take several more months before Derby revealed the extent of Sibbitt's file to a judge in the murder trial in October 2015.

After Derby filed a civil claim alleging retaliation by the Police Department in March 2016, the two officers' alleged misdeeds were made public. His allegations, first reported by the East Bay Times, prompted the county's public defender's office and local prosecutors to launch a review of the officers' cases.

In his civil case, Derby described his investigation against Sibbitt and Terwilliger, claiming he was pushed out of the department by his managers after exposing the information. The department denied wrongdoing, noting that Derby had agreed to resign after he was found to have sexually harassed another officer. A judge recently dismissed Derby's civil suit and he is appealing.

Former Lt. Wade Derby says supervisors at the Pittsburg Police Department retaliated against him after he exposed information about fellow officers' misconduct. (Josh Edelson / For The Times)

The U.S. Supreme Court's 1963 decision in Brady vs. Maryland and later rulings require prosecutors and police to alert defendants to favorable evidence, including information that could undermine the credibility of government witnesses. Once the details about Derby's investigation became public, several defendants argued that they'd been unlawfully deprived of the information about the officers' alleged wrongdoing and never had the chance to attack their credibility.

Contra Costa County prosecutors looked into other criminal cases where the two officers had testified to determine whether the defendants should have been notified about the information. That also included a look at cases in which defendants accepted plea deals without going to trial.

"If I have reason to doubt the credibility of an officer, or a witness, then anything that witness introduces, I can't use," said Lynn Uilkema, a Contra Costa County prosecutor who was involved in the dismissals.

Those concerns pose an especially high risk to prosecutions of low-level crimes, such as drug possession and resisting arrest, which often rely heavily on an officer's eyewitness account. An internal affairs finding that an officer has lied in the past could undermine the prosecution of a minor crime in which there is little evidence other than an officer's word.

Of the 19 convictions thrown out by Contra Costa County prosecutors, seven involved nonviolent felonies, such as drug possession or being a felon carrying a firearm. Eleven others were misdemeanors or infractions — DUI, petty theft, domestic abuse, false representation to a police officer, disturbing the peace or resisting arrest. Most of the defendants pleaded no contest.

In at least some cases, there was compelling evidence that defendants were in fact guilty. One man convicted of carrying a loaded, concealed firearm told The Times the weapon had indeed been in his car.

In the murder trial in which Derby revealed the extent of the records on Sibbitt, prosecutors dropped him as a witness rather than risk his credibility being questioned in front of jurors.

Even in Cardenas' case, which involved other evidence on top of Sibbitt's testimony, prosecutors found they could no longer stand by her conviction, given the allegations about the police officer's past misconduct.

They offered to throw out Cardenas' armed robbery charge and release her immediately if she would plead no contest to a lesser count of grand theft. She agreed.

Since her release, she said, she's had difficulty finding permanent jobs and stable places to live.

Before she was arrested, Cardenas was taking courses at a local college near Pittsburg and was interested in studying criminal justice.

"I was going to be a police officer," she said.

Times staff writer Ben Poston contributed to this report.

This L.A. sheriff's deputy was a pariah in federal court. But his secrets were safe with the state

By JOEL RUBIN
AUG 10, 2018 | 3:00 AM

An image taken from dash cam video of L.A. County Sheriff's Deputy James Peterson during a 2016 traffic stop in which he found drugs. (Los Angeles County Sheriff's Department)

For years. James Peterson's secrets were safe in the courtrooms of Los Angeles.

The L.A. County sheriff's deputy, who trawled a stretch of the 5 Freeway for drug traffickers, often testified in the state court system about his arrests. No one knew to ask about his troubled past.

Then one of Peterson's cases landed in federal court.

Prosecutors in the U.S. attorney's office delved into the deputy's personnel records for black marks that could call his credibility into question. They found records alleging dishonesty and other misconduct, and they turned the information over to attorneys defending two accused drug traffickers, according to court documents reviewed by The Times.

The case — along with several others built on Peterson's work — collapsed, and the deputy became a pariah in federal court.

The different treatment of Peterson's past in state and federal courts wasn't happenstance. It was just one example of how special privacy protections granted to California's police officers prevent defendants, prosecutors and jurors from learning about information that could undermine an officer's credibility. Those special privacy protections don't apply in federal court.

California is the only state in the nation that blocks prosecutors from directly accessing the personnel files of law enforcement witnesses. Defendants who want to find out about an officer's past must navigate a Byzantine legal process that limits disclosures about previous wrongdoing or blocks the release of information altogether.

A Times review of recent state court cases in which Peterson was a potential witness found that only two of 170 defendants facing felony charges tried to obtain information about past complaints against him — and, even in those cases, the defense came away with little to show for it. Most of the others accepted plea deals offered by prosecutors before Peterson was called to testify.

The findings, defense attorneys and some legal experts say, highlight how California's laws risk denying defendants fair trials by preventing them from learning about evidence that could lead judges and jurors to doubt an officer's truthfulness.

A state appellate court ruled last year that Sheriff Jim McDonnell cannot tell prosecutors the names of about 300 deputies disciplined in the past for dishonesty, tampering with evidence or similar misconduct. (Al Seib / Los Angeles Times)

A Times investigation

Aug. 9, 2018

An L.A. County deputy faked evidence. Here's how his misconduct was kept secret in court for years.

Aug. 9, 2018

You've been arrested by a dishonest cop. Can you win in a system set up to protect officers?

Aug. 14, 2018

One cop came forward to expose secrets in his own ranks. The revelation rocked the court system.

Aug. 15, 2018

Here's how California became the most secretive state on police misconduct

“The stakes are far too high to play a shell game with this kind of material,” said Jonathan Abel, who studied law enforcement privacy laws across the country as a fellow at the Stanford Constitutional Law Center. “Innocent people will serve time in prison … because police misconduct evidence is not disclosed.”

But Gregory Palmer, an attorney who advises police departments across the state, defended the privacy laws, arguing that they do allow defendants to learn about a law enforcement witness’ past if there is legitimate reason. Without the laws, he said, defense attorneys would be able to malign a police witness regardless of whether it was relevant to their case.

“As long as California recognizes a police officer’s right to privacy, we have to have a way to balance that right against a defendant’s right to a fair trial,” said Palmer, who specializes in instructing law enforcement agencies on how to oppose legal attempts to open an officer’s disciplinary file. “California’s law does that.”

A Los Angeles County Sheriff’s Department spokeswoman said she could not discuss Peterson’s disciplinary history, citing state law. The deputy also declined to comment.

California lawmakers this month are weighing a proposal that would allow the public to see some law enforcement misconduct records. Disclosure of internal discipline would mark a dramatic change.

The state’s confidentiality laws are so strict that an appellate court ruled last year that L.A. County Sheriff Jim McDonnell could not give prosecutors the names of about 300 deputies disciplined for dishonesty, tampering with evidence or similar misconduct.

The Times identified dozens of deputies on a 2014 version of the Sheriff’s Department’s list of problem officers. Among them was a deputy convicted of filing a false report and another suspended after he pulled over a stranger and received oral sex from her in his patrol car. Both kept their jobs.

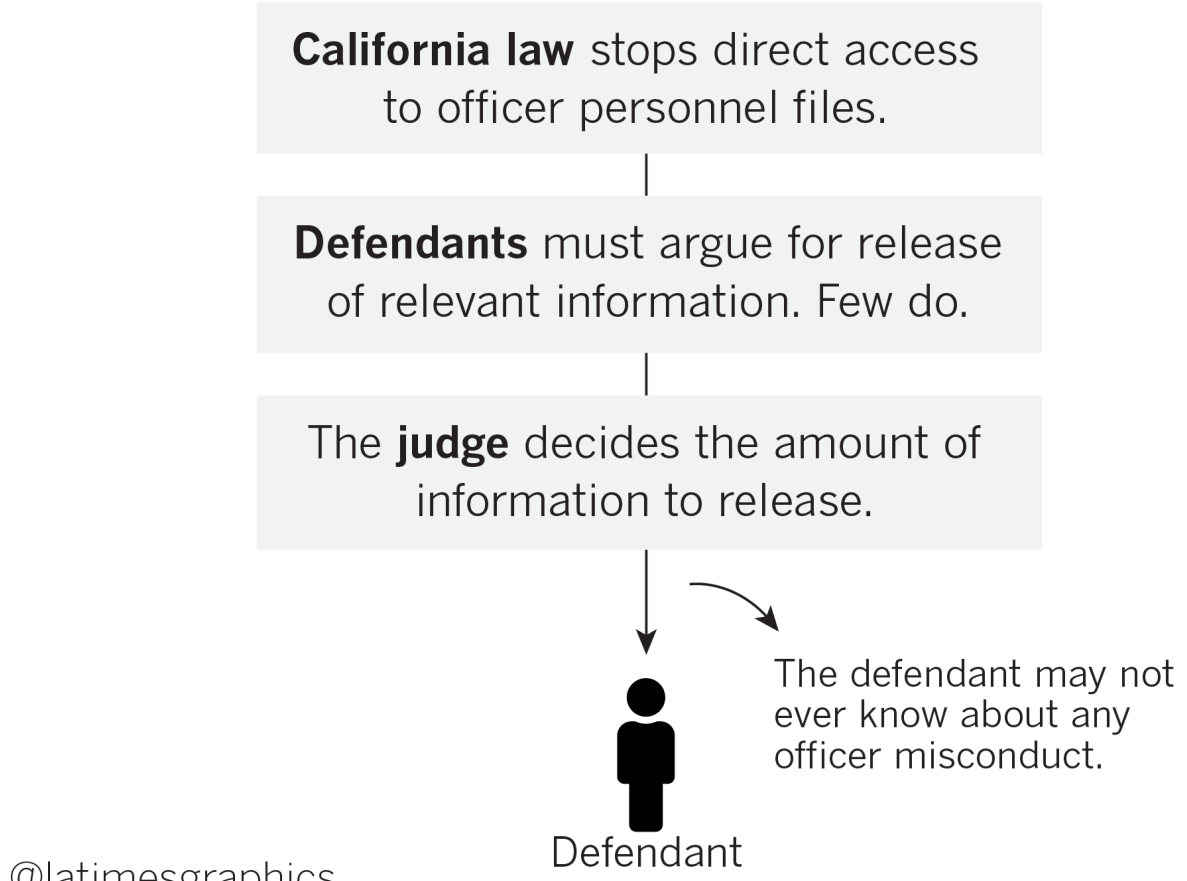
The California Supreme Court has agreed to consider McDonnell’s appeal in the case. But even a decision in the sheriff’s favor would not come close to matching the disclosure rules in federal court.

There, prosecutors are required to give the defense any material from officer personnel files that "reflects upon the truthfulness or possible bias" of potential witnesses, according to Department of Justice policy. And if they are unsure whether something should be handed over, the policy instructs prosecutors to "err on the side of disclosure."

The rules are designed to ensure federal prosecutors meet their so-called Brady obligations, named after the U.S. Supreme Court's landmark 1963 decision in Brady vs. Maryland. In it, the justices ruled that the Constitution requires prosecutors to tell defendants about evidence that might be favorable to them. In later cases, the high court expanded the obligation to include information about government witnesses that calls into question their credibility.

But under California's Pitchess laws, named after a former L.A. County sheriff who fought to keep police disciplinary records sealed, local prosecutors are barred from looking at that information. Instead, the burden falls on defendants to persuade judges to examine officers' files.

Controlled access to officer records in state court



(Swetha Kannan / Los Angeles Times)

To do so, they must make a specific allegation that a police officer lied about an arrest, used excessive force or committed some other serious breach. The judge then looks at the officer's records in private for complaints about similar conduct and determines whether it should be disclosed to the defense.

The law does not allow complaints of misconduct more than five years old to be disclosed. If a judge decides something should be turned over, typically only basic information is released, such as the names and contact information of people who previously accused the officer.

In a San Fernando courtroom last year, a state court judge, David Walgren, went through Peterson's file at the request of a defense lawyer.

L.A. County Superior Court Judge David Walgren is seen during a murder trial in 2014. (Anne Cusack / Los Angeles Times)

Peterson had pulled over Ramon Mercado and his father in November 2016 and discovered a gun and some drug residue inside a hidden compartment in the trunk of the car. In his arrest report, Peterson wrote that Mercado had said the car belonged to him and gave Peterson permission to search it.

Mercado, however, insisted he was innocent, telling his attorney that he had borrowed the car from a friend and had known nothing about the hidden compartment and gun. Mercado wrote in a sworn statement to the judge that he never told Peterson he owned the vehicle.

The car's owner corroborated the story, telling an investigator that he lent the vehicle to Mercado and did not mention the secret compartment, defense attorney Jeffrey Vallens said.

Later, Vallens received a tip from a prosecutor in the case that there might be something incriminating in Peterson's past. Vallens asked the judge to review Peterson's file, arguing that if the deputy had lied about Mercado, he may have been caught lying about other things.

Judge Walgren limited his search to episodes of dishonesty and did not consider any incident more than five years old, court records show. Vallens said he received only the name and phone number of a prosecutor in the U.S. attorney's

office in Los Angeles. The judge ordered him not to disclose the name to anyone else.

Vallens then had to figure out what the prosecutor knew about Peterson.

He called the federal prosecutor and left a message. A different prosecutor called back but declined to say anything about Peterson, telling Vallens he needed to submit a formal request in writing.

“It’s very frustrating,” Vallens said. “My client arguably was illegally arrested and prosecuted, but when I tried to investigate Peterson, I hit a wall.”

Ramon Mercado was pulled over on the 5 Freeway and arrested by L.A. County Sheriff's Deputy James Peterson. He said the deputy lied in his arrest report. (Gary Coronado / Los Angeles Times)

The case, he said, highlighted why he rarely tries to extract information about cops through California’s Pitchess laws. He estimated that he attempts to get material on officers in less than 5% of his cases.

It is a common sentiment among defense attorneys, who say the little information they get from judges often leads to dead ends as people cannot be found or refuse to cooperate. The process can take weeks or longer to play out. The pace and marginal payoff, several defense attorneys said, are strong deterrents to filing

such motions — especially if a client is being held in jail and could be freed by taking a plea deal.

California's Supreme Court has concluded that the Pitchess laws do not violate the constitutional rights guaranteed to defendants under the Brady decision.

On the same day in May 2017 that Walgren was reviewing Peterson's records in his state court chambers, U.S. District Judge Christina A. Snyder held a far different hearing about Peterson's record in her downtown L.A. courtroom.

> I want to make clear that if there's something that hasn't been produced, then I expect it to be produced.
>
> — U.S. District Judge Christina A. Snyder

Attorneys for Cesar Castillo Flores and Manuel Moreno, whom Peterson had caught with nearly 9 pounds of methamphetamine and a gun, were arguing that the drugs and weapon should be thrown out as evidence. Peterson, they contended, had violated the men's constitutional rights by stopping and searching their car without justification.

At that hearing, and a similar one a few weeks earlier, Snyder questioned whether the government had provided the defense all the information about Peterson that the law required.

Saying Peterson's credibility was "on the line," the federal judge told prosecutors, "I want to make clear that if there's something that hasn't been produced, then I expect it to be produced."

Because federal prosecutors must adhere strictly to the rules set out by the Brady case and are not beholden to a state's police privacy laws, they can review an officer's personnel records.

In a nod to California's strict rules, the judge barred any public discussion of Peterson's disciplinary history. But at the hearing and in a written order, she referenced two incidents in Peterson's file that had resulted in punishment — one from 1998 and another in 2002.

In one of the incidents, Snyder said, Peterson had been suspended for breaking a department rule and being "less than truthful" in some way. The judge did not describe the other instance of misconduct, but defense attorneys claimed in a court filing that Peterson had been found "lying to his supervisors regarding the … misconduct" in both episodes.

A prosecutor assured Snyder the government had handed over the records from the two incidents. The government also disclosed documents from an investigation into whether Peterson had lied about a 2014 traffic stop.

In that case, Peterson wrote a report saying he obtained consent from a driver to search a car that turned out to be carrying 3 pounds of methamphetamine. But after the deputy twice amended his account amid questions over how he got permission for the search from the Spanish-speaking motorist, the prosecutor asked the judge to dismiss the charges, according to law enforcement records reviewed by The Times.

Afterward, Sheriff's Department officials opened an investigation into whether Peterson had committed perjury, district attorney records show. The district attorney's office decided against charging Peterson, concluding that there was no evidence he knowingly falsified his report and that the deputy's accounts were not necessarily inconsistent. A Sheriff's Department spokeswoman said "appropriate administrative action was taken" after the investigation, but she did not say what discipline, if any, was imposed.

After disclosing the personnel reports about Peterson, federal prosecutors in the case against Flores and Moreno opted not to call the deputy to testify about the traffic stop. Instead, they argued that footage from the camera in Peterson's car showed he had been justified in stopping and searching the men's vehicle.

Snyder disagreed, saying the video was inconclusive. She tossed out the drugs and gun as evidence, and prosecutors dismissed the case.

The government dismissed seven of the 10 federal cases based on Peterson's arrests and has not filed a new case involving the deputy in more than a year.

Shortly after Peterson's last two federal cases were dismissed in October, Sheriff's Department officials removed him from his specialized assignment patrolling the

5 Freeway for drug traffickers. He was reassigned to a post ticketing truck drivers on city streets in Santa Clarita.

Back in state court, however, Peterson's past behavior remained largely unknown.

Attorney Jeffrey Vallens said that within a few days of the publication of a Times report on Deputy James Peterson last year, a county prosecutor called with an offer to reduce charges against a client of his who was arrested by Peterson. (Mel Melcon / Los Angeles Times)

The case against Mercado — the man Peterson arrested after finding the secret compartment — had yet to go to trial when The Times published a story last year detailing some of the federal drug cases that had fallen apart due to questions about the deputy's credibility.

Vallens, Mercado's attorney, said that within a few days of the article, a county prosecutor called with an offer to reduce the gun and drug trafficking charges against his client to a minor traffic violation that came with no jail time. The deal was made because of an "insufficiency of evidence," a spokeswoman for the district attorney's office told The Times.

Mercado, who works as a plumber in Stockton, insists he was innocent and said he remains angry that he was ever prosecuted.

“I could have lost everything, for what? Nothing,” the 24-year-old said.

His attorney never learned why, after seeking information on Peterson, he was given the name of a prosecutor in the U.S. attorney’s office. But he said one thing was clear: Had the case gone to trial, Vallens would have known little, if anything, about the deputy’s disciplinary history.

“Those are the rules,” he said.

Times staff writer Ruben Vives contributed to this report.