

AMENDED IN ASSEMBLY MAY 23, 2025

AMENDED IN ASSEMBLY APRIL 10, 2025

CALIFORNIA LEGISLATURE—2025–26 REGULAR SESSION

ASSEMBLY BILL

No. 1388

Introduced by Assembly Member Bryan

February 21, 2025

An act to amend Sections 832.7 and 13510.9 of the Penal Code, relating to law enforcement.

LEGISLATIVE COUNSEL'S DIGEST

AB 1388, as amended, Bryan. Law enforcement: settlement agreements.

Existing law establishes the Commission on Peace Officer Standards and Training, and requires the commission to, among other things, establish a certification program for peace officers, as defined. Existing law requires the commission to establish procedures for accepting complaints from members of the public regarding peace officers or law enforcement agencies that may be investigated. Existing law establishes, within the commission, the Peace Officer Standards Accountability Division and requires the division, among other things, to bring proceedings seeking the suspension or revocation of certification of a peace officer.

Existing law, the California Public Records Act, generally requires public records to be open for inspection by the public. Existing law provides numerous exceptions to this requirement. Under existing law, the personnel records of peace officers and custodial officers are confidential and not subject to public inspection. Existing law provides certain exemptions to this confidentiality, including the reports,

investigations, and findings of certain incidents involving the use of force by a peace officer.

This bill would additionally exempt agreements between an employing agency and a peace officer that, among other things, require the agency to destroy, remove, or conceal a record of a misconduct investigation. ~~The bill would also require any agency employing a peace officer to report certain events to the commission, that occurred after January 1, 2020, and resulted in the peace officer's separation from employment or appointment after January 1, 2023, and include the reason for the separation and whether the separation was part of the resolution or a settlement.~~ The bill would declare that its provisions are severable.

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.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares the following:
- 2 (a) Separation agreements that obscure information about officer
- 3 misconduct by requiring law enforcement agencies to destroy,
- 4 remove, conceal, or replace records and findings of officers'
- 5 misconduct, or make particular findings in misconduct
- 6 investigations, or refrain from disclosing information about
- 7 misconduct, are contrary to the express provisions and underlying
- 8 policy of existing law.
- 9 (b) Because settlement agreements requiring law enforcement
- 10 agencies to obscure information about officer misconduct are
- 11 specifically designed to exempt officers from responsibility for
- 12 fraud, injuring community members' persons and property, and
- 13 other violations of law and agency policy, the agreements are also
- 14 contrary to good morals and public policy.
- 15 (c) It is the intent of the Legislature to expressly declare that
- 16 these settlement agreements are against public policy, and to affirm

1 the reporting, retention, and disclosure requirements of existing
2 law.

3 SEC. 2. Section 832.7 of the Penal Code is amended to read:

4 832.7. (a) Except as provided in subdivision (b), the personnel
5 records of peace officers and custodial officers and records
6 maintained by a state or local agency pursuant to Section 832.5,
7 or information obtained from these records, are confidential and
8 shall not be disclosed in any criminal or civil proceeding except
9 by discovery pursuant to Sections 1043 and 1046 of the Evidence
10 Code. This section does not apply to investigations or proceedings
11 concerning the conduct of peace officers or custodial officers, or
12 an agency or department that employs those officers, conducted
13 by a grand jury, a district attorney's office, the Attorney General's
14 office, or the Commission on Peace Officer Standards and Training.

15 (b) (1) Notwithstanding subdivision (a), Section 7923.600 of
16 the Government Code, or any other law, the following peace officer
17 or custodial officer personnel records and records maintained by
18 a state or local agency shall not be confidential and shall be made
19 available for public inspection pursuant to the California Public
20 Records Act (Division 10 (commencing with Section 7920.000))
21 of Title 1 of the Government Code):

22 (A) A record relating to the report, investigation, or findings of
23 any of the following:

24 (i) An incident involving the discharge of a firearm at a person
25 by a peace officer or custodial officer.

26 (ii) An incident involving the use of force against a person by
27 a peace officer or custodial officer that resulted in death or in great
28 bodily injury.

29 (iii) A sustained finding involving a complaint that alleges
30 unreasonable or excessive force.

31 (iv) A sustained finding that an officer failed to intervene against
32 another officer using force that is clearly unreasonable or excessive.

33 (B) (i) Any record relating to an incident in which a sustained
34 finding was made by any law enforcement agency or oversight
35 agency that a peace officer or custodial officer engaged in sexual
36 assault involving a member of the public.

37 (ii) As used in this subparagraph, "sexual assault" means the
38 commission or attempted initiation of a sexual act with a member
39 of the public by means of force, threat, coercion, extortion, offer
40 of leniency or other official favor, or under the color of authority.

1 For purposes of this definition, the propositioning for or
2 commission of any sexual act while on duty is considered a sexual
3 assault.

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

8 (C) Any record relating to an incident in which a sustained
9 finding was made by any law enforcement agency or oversight
10 agency involving dishonesty by a peace officer or custodial officer
11 directly relating to the reporting, investigation, or prosecution of
12 a crime, or directly relating to the reporting of, or investigation of
13 misconduct by, another peace officer or custodial officer, including,
14 but not limited to, any false statements, filing false reports,
15 destruction, falsifying, or concealing of evidence, or perjury.

16 (D) Any record relating to an incident in which a sustained
17 finding was made by any law enforcement agency or oversight
18 agency that a peace officer or custodial officer engaged in ~~conduct~~
19 *conduct*, including, but not limited to, verbal statements, writings,
20 online posts, recordings, and gestures, involving prejudice or
21 discrimination against a person on the basis of race, religious creed,
22 color, national origin, ancestry, physical disability, mental
23 disability, medical condition, genetic information, marital status,
24 sex, gender, gender identity, gender expression, age, sexual
25 orientation, or military and veteran status.

26 (E) Any record relating to an incident in which a sustained
27 finding was made by any law enforcement agency or oversight
28 agency that the peace officer made an unlawful arrest or conducted
29 an unlawful search.

30 (F) An agreement prohibited by subdivision (e) of Section
31 13510.9.

32 (2) Records that are subject to disclosure under clause (iii) or
33 (iv) of subparagraph (A) of paragraph (1), or under subparagraph
34 (D) or (E) of paragraph (1), relating to an incident that occurs
35 before January 1, 2022, shall not be subject to the time limitations
36 in paragraph (11) until January 1, 2023.

37 (3) Records that shall be released pursuant to this subdivision
38 include all investigative reports; photographic, audio, and video
39 evidence; transcripts or recordings of interviews; autopsy reports;
40 all materials compiled and presented for review to the district

1 attorney or to any person or body charged with determining
2 whether to file criminal charges against an officer in connection
3 with an incident, whether the officer's action was consistent with
4 law and agency policy for purposes of discipline or administrative
5 action, or what discipline to impose or corrective action to take;
6 documents setting forth findings or recommended findings; and
7 copies of disciplinary records relating to the incident, including
8 any letters of intent to impose discipline, any documents reflecting
9 modifications of discipline due to the Skelly or grievance process,
10 and letters indicating final imposition of discipline or other
11 documentation reflecting implementation of corrective action.
12 Records that shall be released pursuant to this subdivision also
13 include records relating to an incident specified in paragraph (1)
14 in which the peace officer or custodial officer resigned before the
15 law enforcement agency or oversight agency concluded its
16 investigation into the alleged incident.

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

20 (5) If an investigation or incident involves multiple officers,
21 information about allegations of misconduct by, or the analysis or
22 disposition of an investigation of, an officer shall not be released
23 pursuant to subparagraph (B), (C), (D), or (E) of paragraph (1),
24 unless it relates to a sustained finding regarding that officer that
25 is itself subject to disclosure pursuant to this section. However,
26 factual information about that action of an officer during an
27 incident, or the statements of an officer about an incident, shall be
28 released if they are relevant to a finding against another officer
29 that is subject to release pursuant to subparagraph (B), (C), (D),
30 or (E) of paragraph (1).

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

33 (A) To remove personal data or information, such as a home
34 address, telephone number, or identities of family members, other
35 than the names and work-related information of peace and custodial
36 officers.

37 (B) To preserve the anonymity of whistleblowers, complainants,
38 victims, and witnesses.

39 (C) To protect confidential medical, financial, or other
40 information of which disclosure is specifically prohibited by federal

1 law or would cause an unwarranted invasion of personal privacy
2 that clearly outweighs the strong public interest in records about
3 possible misconduct and use of force by peace officers and
4 custodial officers.

5 (D) Where there is a specific, articulable, and particularized
6 reason to believe that disclosure of the record would pose a
7 significant danger to the physical safety of the peace officer,
8 custodial officer, or another person.

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

15 (8) An agency may withhold a record of an incident described
16 in paragraph (1) that is the subject of an active criminal or
17 administrative investigation, in accordance with any of the
18 following:

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

29 (ii) After 60 days from the misconduct or use of force, the
30 agency may continue to delay the disclosure of records or
31 information if the disclosure could reasonably be expected to
32 interfere with a criminal enforcement proceeding against an officer
33 who engaged in misconduct or ~~used the use of~~ force. If an agency
34 delays disclosure pursuant to this clause, the agency shall, at
35 180-day intervals as necessary, provide, in writing, the specific
36 basis for the agency's determination that disclosure could
37 reasonably be expected to interfere with a criminal enforcement
38 proceeding. The writing shall include the estimated date for the
39 disclosure of the withheld information. Information withheld by
40 the agency shall be disclosed when the specific basis for

1 withholding is resolved, when the investigation or proceeding is
2 no longer active, or by no later than 18 months after the date of
3 the incident, whichever occurs sooner.

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

28 (iv) In an action to compel disclosure brought pursuant to
29 Section 7923.000 of the Government Code, an agency may justify
30 delay by filing an application to seal the basis for withholding, in
31 accordance with Rule 2.550 of the California Rules of Court, or
32 any successor rule, if disclosure of the written basis itself would
33 impact a privilege or compromise a pending investigation.

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

39 (C) During an administrative investigation into an incident
40 described in paragraph (1), the agency may delay the disclosure

1 of records or information until the investigating agency determines
2 whether the misconduct or use of force violated a law or agency
3 policy, but no longer than 180 days after the date of the employing
4 agency's discovery of the misconduct or use of force, or allegation
5 of misconduct or use of force, by a person authorized to initiate
6 an investigation.

7 (9) A record of a complaint, or the investigations, findings, or
8 dispositions of that complaint, shall not be released pursuant to
9 this section if the complaint is frivolous, as defined in Section
10 128.5 of the Code of Civil Procedure, or if the complaint is
11 unfounded.

12 (10) The cost of copies of records subject to disclosure pursuant
13 to this subdivision that are made available upon the payment of
14 fees covering direct costs of duplication pursuant to subdivision
15 (a) of Section 7922.530 of the Government Code shall not include
16 the costs of searching for, editing, or redacting the records.

17 (11) Except to the extent temporary withholding for a longer
18 period is permitted pursuant to paragraph (8), records subject to
19 disclosure under this subdivision shall be provided at the earliest
20 possible time and no later than 45 days from the date of a request
21 for their disclosure.

22 (12) (A) For purposes of releasing records pursuant to this
23 subdivision, the lawyer-client privilege does not prohibit the
24 disclosure of either of the following:

25 (i) Factual information provided by the public entity to its
26 attorney or factual information discovered in any investigation
27 conducted by, or on behalf of, the public entity's attorney.

28 (ii) Billing records related to the work done by the attorney so
29 long as the records do not relate to active and ongoing litigation
30 and do not disclose information for the purpose of legal
31 consultation between the public entity and its attorney.

32 (B) This paragraph does not prohibit the public entity from
33 asserting that a record or information within the record is exempted
34 or prohibited from disclosure pursuant to any other federal or state
35 law.

36 (13) Notwithstanding subdivision (a) or any other law, an agency
37 that formerly employed a peace officer or custodial officer may,
38 without receiving a request for disclosure, disclose to the public
39 the termination for cause of that officer by that agency for any
40 disclosable incident, including those described in subparagraphs

1 (A) to (E), inclusive, of paragraph (1). Any such disclosure shall
2 be at the discretion of the agency and shall not include any
3 information otherwise prohibited from disclosure. This paragraph
4 is declaratory of existing law.

5 (c) Notwithstanding subdivisions (a) and (b), a department or
6 agency shall release to the complaining party a copy of the
7 complaining party's own statements at the time the complaint is
8 filed.

9 (d) Notwithstanding subdivisions (a) and (b), a department or
10 agency that employs peace or custodial officers may disseminate
11 data regarding the number, type, or disposition of complaints
12 (sustained, not sustained, exonerated, or unfounded) made against
13 its officers if that information is in a form ~~which~~ *that* does not
14 identify the individuals involved.

15 (e) Notwithstanding subdivisions (a) and (b), a department or
16 agency that employs peace or custodial officers may release factual
17 information concerning a disciplinary investigation if the officer
18 who is the subject of the disciplinary investigation, or the officer's
19 agent or representative, publicly makes a statement they know to
20 be false concerning the investigation or the imposition of
21 disciplinary action. Information may not be disclosed by the peace
22 or custodial officer's employer unless the false statement was
23 published by an established medium of communication, such as
24 television, radio, or a newspaper. Disclosure of factual information
25 by the employing agency pursuant to this subdivision is limited
26 to facts contained in the officer's personnel file concerning the
27 disciplinary investigation or imposition of disciplinary action that
28 specifically refute the false statements made public by the peace
29 or custodial officer or their agent or representative.

30 (f) (1) The department or agency shall provide written
31 notification to the complaining party of the disposition of the
32 complaint within 30 days of the disposition.

33 (2) The notification described in this subdivision is not
34 conclusive or binding or admissible as evidence in any separate
35 or subsequent action or proceeding brought before an arbitrator,
36 court, or judge of this state or the United States.

37 (g) This section does not affect the discovery or disclosure of
38 information contained in a peace or custodial officer's personnel
39 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 13510.9 of the Penal Code is amended to read:

13510.9. (a) Beginning January 1, 2023, any agency employing peace officers shall report to the commission within 10 days, in a form specified by the commission, any of the following events:

(1) The employment, appointment, or termination or separation from employment or appointment, by that agency, of any peace officer. Separation from employment or appointment includes any involuntary termination, resignation, or retirement.

(2) Any complaint, charge, or allegation of conduct against a peace officer employed by that agency that could render a peace officer subject to suspension or revocation of certification by the commission pursuant to Section 13510.8.

(3) Any finding or recommendation by a civilian oversight entity, including a civilian review board, civilian police commission, police chief, or civilian inspector general, that a peace officer employed by that agency engaged in conduct that could render a peace officer subject to suspension or revocation of certification by the commission pursuant to Section 13510.8.

(4) The final disposition of any investigation that determines a peace officer engaged in conduct that could render a peace officer subject to suspension or revocation of certification by the commission pursuant to Section 13510.8, regardless of the discipline imposed.

(5) Any civil judgment or court finding against a peace officer based on conduct, or settlement of a civil claim against a peace officer or an agency based on allegations of officer conduct that could render a peace officer subject to suspension or revocation of certification by the commission pursuant to Section 13510.8.

(b) By July 1, 2023, any agency employing peace officers shall report to the commission any events described in subdivision (a) that occurred between January 1, 2020, and January 1, 2023.

1 (c) An agency employing peace officers shall make available
2 for inspection or duplication by the commission any investigation
3 into any matter reported pursuant to paragraph (2) of subdivision
4 (a), including any physical or documentary evidence, witness
5 statements, analysis, and conclusions, for no less than two years
6 after reporting of the finding or recommendation reported pursuant
7 to paragraph (3) of subdivision (a), the final disposition of the
8 investigation reported pursuant to paragraph (4) of subdivision
9 (a), or the civil judgment or court finding reported pursuant to
10 paragraph (5) of subdivision (a), as applicable, whichever is latest.

11 (d) (1) In a case of separation from employment or appointment,
12 the employing agency shall execute and maintain an
13 affidavit-of-separation form adopted by the commission describing
14 the reason for separation and shall include whether the separation
15 is part of the resolution or settlement of any criminal, civil, or
16 administrative charge or investigation. The affidavit shall be signed
17 under penalty of perjury and submitted to the commission.

18 (2) A peace officer who has separated from employment or
19 appointment shall be permitted to respond to the
20 affidavit-of-separation form, in writing, to the commission, setting
21 forth their understanding of the facts and reasons for the separation,
22 if different from those provided by the agency.

23 (3) Before employing or appointing any peace officer who has
24 previously been employed or appointed as a peace officer by
25 another agency, the agency shall contact the commission to inquire
26 as to the facts and reasons a peace officer became separated from
27 any previous employing agency. The commission shall, upon
28 request and without prejudice, provide to the subsequent employing
29 agency any information regarding the separation in its possession.

30 (4) Civil liability shall not be imposed on either a law
31 enforcement agency or the commission, or any of the agency's or
32 commission's agents, for providing information pursuant to this
33 section in a good faith belief that the information is accurate.

34 (e) (1) An agency employing a peace officer shall not enter
35 into an agreement with a peace officer that requires any of the
36 following:

37 (A) The agency to destroy, remove, or conceal a record of a
38 misconduct investigation.

39 (B) The agency to halt or make particular findings in a
40 misconduct investigation.

1 (C) The agency to otherwise restrict the disclosure of
2 information about an allegation or investigation of misconduct
3 pursuant to any provision of law, including, but not limited to, this
4 section, or Sections 832.7, 832.12, 1054.1, 13510.8, or 13510.85
5 of this code.

6 (2) A provision of an agreement inconsistent with this
7 subdivision is contrary to law and public policy and is void and
8 unenforceable.

9 ~~(3) Notwithstanding any agreement described in this subdivision,~~
10 ~~any events described in subdivision (a) that occurred after January~~
11 ~~1, 2020, and any peace officer's separation from employment or~~
12 ~~appointment after January 1, 2023, including the reason for the~~
13 ~~separation and whether the separation was part of the resolution~~
14 ~~or settlement of any charge or investigation, shall be reported to~~
15 ~~the commission.~~

16 (f) The commission shall maintain the information reported
17 pursuant to this section, in a form determined by the commission,
18 and in a manner that may be accessed by the subject peace officer,
19 any employing law enforcement agency of that peace officer, any
20 law enforcement agency that is performing a preemployment
21 background investigation of that peace officer, or the commission
22 when necessary for the purposes of decertification. This
23 information may be withheld from the subject peace officer if the
24 commission determines that disclosure pursuant to this section
25 may jeopardize an ongoing investigation, put a victim or witness
26 at risk of any form of harm or injury, or may otherwise create a
27 risk of any form of harm or injury that outweighs the interest in
28 disclosure, until the risk of harm or injury is ended or mitigated
29 so that the interest in disclosure is no longer outweighed by the
30 interest in nondisclosure. Information that the commission releases
31 to an agency pursuant to this section that has been withheld from
32 the subject peace officer shall be kept confidential by the receiving
33 agency.

34 (g) (1) The commission shall notify the head of the agency that
35 employs the peace officer of all of the following:

36 (A) The initiation of any investigation of that peace officer by
37 the division, unless that notification would interfere with the
38 investigation.

1 (B) A finding by the division, following an investigation or
2 review of the investigation, of grounds to take action against the
3 peace officer's certification or application.

4 (C) A final determination by the commission as to whether
5 action should be taken against a peace officer's certification or
6 application.

7 (D) An adjudication, after hearing, resulting in action against
8 an officer's certification or application.

9 (2) If the certificate of a peace officer is temporarily suspended
10 pursuant to subdivision (d) of Section 13510.8, or revoked, the
11 commission shall also notify the district attorney of the county in
12 which the peace officer is or was employed of this fact.

13 (3) Each notification required by this subdivision shall include
14 the name of the peace officer and a summary of the basis for the
15 action requiring notification.

16 SEC. 4. The provisions of this act are severable. If any
17 provision of this act or its application is held invalid, that invalidity
18 shall not affect other provisions or applications that can be given
19 effect without the invalid provision or application.

20 SEC. 5. The Legislature finds and declares that ~~Section~~ *Sections*
21 2 and 3 of this act, which amend ~~Section~~ *Sections* 832.7 and
22 13510.9 of the Penal Code, ~~further~~, *further*, within the meaning
23 of paragraph (7) of subdivision (b) of Section 3 of Article I of the
24 California Constitution, the purposes of that constitutional section
25 as it relates to the right of public access to the meetings of local
26 public bodies or the writings of local public officials and local
27 agencies. Pursuant to paragraph (7) of subdivision (b) of Section
28 3 of Article I of the California Constitution, the Legislature makes
29 the following findings:

30 This act furthers public access and transparency with respect to
31 certain records concerning the conduct of law enforcement officials.