

AMENDED IN SENATE MAY 30, 2007

AMENDED IN SENATE MARCH 26, 2007

SENATE BILL

No. 1019

Introduced by Senator Romero

*(Coauthors: Senators Kuehl, McClintock, Migden, Ridley-Thomas,
and Scott)*

(Coauthor: Assembly Member Leno)

February 23, 2007

An act to amend Section 832.7 of the Penal Code, relating to peace officer records.

LEGISLATIVE COUNSEL'S DIGEST

SB 1019, as amended, Romero. Peace officer records: confidentiality.

Existing law generally regulates the confidentiality of various personnel records relating to peace and custodial officers.

This bill would state the intent of the Legislature to abrogate the California Supreme Court decision in *Copley Press, Inc. v. Superior Court* and to restore public access to *meetings and hearings regarding peace officer records and meetings discipline* that were open prior to the Copley Press decision.

This bill would provide that notwithstanding specified statutory provisions or the holding in *Copley Press, Inc. v. Superior Court*, any ~~charter~~ city, county, city and county, or other local government entity that employs peace officers, or any state agency or state department, may elect, through an ordinance duly enacted, as specified, to follow the practices ~~it~~ followed by any city, county, city and county, or other local government entity that employs peace officers, or any state agency or state department, before the Copley Press decision with respect to

the release of limited information regarding certain personnel investigations, *subject to certain conditions*.

~~This bill would provide that notwithstanding the confidential nature of peace and custodial officer complaints, as specified, the employing agency may release other specified information.~~

~~This bill would specify the means by which requests for disclosure of confidential information shall be made.~~

~~By imposing additional duties on local law enforcement agencies in connection with peace and custodial officer discipline, this bill would impose a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

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

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

1 SECTION 1. Section 832.7 of the Penal Code is amended to
2 read:

3 832.7. (a) ~~(1)~~Peace officer or custodial officer personnel
4 records and records maintained by any state or local agency
5 pursuant to Section 832.5, or information obtained from these
6 records, are confidential and shall not be disclosed in any criminal
7 or civil proceeding except by discovery pursuant to Sections 1043
8 and 1046 of the Evidence Code. This section shall not apply to
9 investigations or proceedings concerning the conduct of peace
10 officers or custodial officers, or an agency or department that
11 employs those officers, conducted by a grand jury, a district
12 attorney’s office, or the Attorney General’s office, ~~civilian review~~
13 ~~boards, personnel boards, police commissions, or civil service~~
14 ~~commissions.~~ *office.*

15 ~~(2) It is the intent of the Legislature in enacting the act amending~~
16 ~~this section to abrogate the California Supreme Court case of~~
17 ~~Copley Press, Inc. v. Superior Court (2006) 39 Cal.4th 1272, to~~
18 ~~restore public access to peace officer records, and to restore public~~

1 access to meetings and hearings that were open to the public prior
2 to the Copley Press decision.

3 (b) Notwithstanding subdivision (a), a department or agency
4 shall release to the complaining party a copy of his or her own
5 statements at the time the complaint is filed.

6 (c) Notwithstanding subdivision (a), a department or agency
7 that employs peace or custodial officers may disseminate data
8 regarding the number, type, or disposition of complaints (sustained,
9 not sustained, exonerated, or unfounded) made against its officers
10 if that information is in a form which does not identify the
11 individuals involved.

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

27 ~~(e) Notwithstanding any provision of this chapter or the holding~~
28 ~~in Copley Press, Inc. v. Superior Court (2006) 39 Cal.4th 1272~~
29 ~~interpreting any provision of this chapter, any charter city may~~
30 ~~elect, through an ordinance duly enacted, to follow the practices~~
31 ~~it followed before the Copley Press decision with respect to the~~
32 ~~release of limited information regarding certain personnel~~
33 ~~investigations. If a charter city so elects, the city's legislative body~~
34 ~~must find, based on the presentation of substantial evidence, that~~
35 ~~the practices to be enacted and followed were followed by the city~~
36 ~~before the Copley Press decision was final.~~

37 (f) Notwithstanding subdivision (a), with respect to each
38 sustained complaint, charge, disciplinary matter, or internal
39 investigation where the discipline imposed is either suspension,
40 demotion, removal, or other separation of the peace officer from

1 ~~service with the department (other than by resignation), a~~
2 ~~department or agency that employs peace or custodial officers may~~
3 ~~release any of the following:~~

4 ~~(1) The name and badge number of the subject officer.~~
5 ~~(2) The charges brought against the officer.~~
6 ~~(3) The discipline sought by the office.~~
7 ~~(4) The name and current address of the complainant, unless~~
8 ~~the complainant requests it be kept confidential.~~

9 ~~(5) The factual findings with respect to the conduct at issue.~~
10 ~~(6) The discipline imposed or corrective action taken.~~

11 ~~(g) Notwithstanding subdivision (a), in cases in which a civilian~~
12 ~~review board or other governmental body outside the department~~
13 ~~or agency recommends imposition of discipline or makes or~~
14 ~~recommends a finding that an officer's conduct was out of policy~~
15 ~~or that a complaint was founded, and the finding is overturned or~~
16 ~~the recommendation is not followed by the department or agency~~
17 ~~that employs the peace officer, the department or agency may, in~~
18 ~~its discretion, release any information already released by the~~
19 ~~outside body, as well as a summary of the grounds for overturning~~
20 ~~the outside body's finding or not following its recommendation.~~

21 *(e) (1) Notwithstanding any provision of this chapter or the*
22 *holding in Copley Press, Inc. v. Superior Court (2006) 39 Cal.4th*
23 *1272, any city, county, city and county, local government entity,*
24 *state agency, or state department that employs peace officers, may*
25 *elect through ordinance or regulation, duly enacted or adopted,*
26 *to follow the practices that any city, county, city and county, local*
27 *government entity, state agency, or state department that employs*
28 *peace officers followed, with respect to public hearings on, and*
29 *the release of information regarding, citizen complaints and other*
30 *personnel investigations, prior to the Copley Press decision. If*
31 *any of those entities so elects, the local legislative body or the state*
32 *agency or state department shall find, based on the presentation*
33 *of substantial evidence, that the practices to be enacted or adopted*
34 *and followed do not provide for greater release of information*
35 *than was allowed by any city, county, city and county, local*
36 *government entity, state agency, or state department in California*
37 *that employs peace officers, prior to when the Copley Press*
38 *decision became final.*

39 *(2) A chief officer of the employing agency may certify in writing*
40 *that information otherwise rendered nonconfidential pursuant to*

1 paragraph (1) be withheld from public disclosure only if the chief
2 officer expressly finds and publicly discloses facts that establish
3 all of the following:

4 (A) On the facts of the particular case, there exists a threat to
5 officer safety or operational security that overrides the right of
6 public access to the information.

7 (B) A threat to officer safety or operational security supports
8 nondisclosure of the information.

9 (C) A substantial probability exists that the officer safety or
10 operational security will be jeopardized if the information is not
11 withheld.

12 (D) The proposed withholding of information is narrowly
13 tailored.

14 (E) No less restrictive means exist to protecting officer safety
15 or operational security.

16 (3) If the chief officer pursuant to paragraph (2) so certifies,
17 the commission or entity that is charged with reviewing the peace
18 officer discipline investigation may review the chief officer's
19 certification in closed session to determine whether or not to
20 override the certification.

21 ~~(h)~~

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

25 (2) The notification described in this subdivision shall not be
26 conclusive or binding or admissible as evidence in any separate
27 or subsequent action or proceeding brought before an arbitrator,
28 court, or judge of this state or the United States.

29 ~~(i)~~

30 (g) Nothing in this section shall affect the discovery or disclosure
31 of information contained in a peace or custodial officer's personnel
32 file pursuant to Section 1043 of the Evidence Code.

33 ~~(j) Information disclosable pursuant to this section shall be made
34 available upon request pursuant to Section 6250 of the Government
35 Code and following.~~

36 ~~SEC. 2.— If the Commission on State Mandates determines that
37 this act contains costs mandated by the state, reimbursement to
38 local agencies and school districts for those costs shall be made
39 pursuant to Part 7 (commencing with Section 17500) of Division
40 4 of Title 2 of the Government Code.~~

1 *SEC. 2. It is the intent of the Legislature, in amending Section*
2 *832.7 of the Penal Code during the 2007–08 Regular Session, to*
3 *abrogate the holding by the California Supreme Court in Copley*
4 *Press, Inc. v. Superior Court (2006) 39 Cal.4th 1272, to encourage*
5 *appropriate public disclosure of peace officer and custodial officer*
6 *personnel records in disciplinary matters, and to restore the*
7 *public’s right of access to meetings and hearings as it existed prior*
8 *to the Copley Press decision.*

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