

Introduced by Senator Mitchell

February 27, 2015

An act to amend Section 832.5 of the Penal Code, relating to peace officers.

LEGISLATIVE COUNSEL'S DIGEST

SB 629, as introduced, Mitchell. Peace officers: complaints.

Existing law requires a department or agency that employs peace officers or custodial officers to establish a procedure to investigate complaints by members of the public against those officers. Existing law establishes retention requirements and access privileges, as specified, for those complaints and related reports or findings.

This bill would make technical, nonsubstantive changes to those provisions.

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

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

- 1 SECTION 1. Section 832.5 of the Penal Code is amended to
- 2 read:
- 3 832.5. (a) (1) ~~Each~~A department or agency in this state that
- 4 employs peace officers shall establish a procedure to investigate
- 5 complaints by members of the public against the personnel of ~~these~~
- 6 *those* departments or agencies, and shall make a written description
- 7 of the procedure available to the public.
- 8 (2) ~~Each~~A department or agency that employs custodial officers,
- 9 as defined in Section 831.5, may establish a procedure to
- 10 investigate complaints by members of the public against those

1 custodial officers employed by these departments or agencies,
2 provided however, that any procedure so established shall comply
3 with the provisions of this section and with the provisions of
4 Section 832.7.

5 (b) Complaints and any reports or findings relating to these
6 complaints shall be retained for a period of at least five years. All
7 complaints retained pursuant to this subdivision may be maintained
8 either in the peace *officer's* or custodial officer's general personnel
9 file or in a separate file designated by the department or agency
10 as provided by department or agency policy, in accordance with
11 all applicable requirements of law. However, prior to any official
12 determination regarding promotion, transfer, or disciplinary action
13 by an officer's employing department or agency, the complaints
14 described by subdivision (c) shall be removed from the officer's
15 general personnel file and placed in separate file designated by the
16 department or agency, in accordance with all applicable
17 requirements of law.

18 (c) Complaints by members of the public that are determined
19 by the peace *officer's* or custodial officer's employing agency to
20 be frivolous, as defined in Section 128.5 of the Code of Civil
21 Procedure, or unfounded or exonerated, or any portion of a
22 complaint that is determined to be frivolous, unfounded, or
23 exonerated, shall not be maintained in that officer's general
24 personnel file. However, these complaints shall be retained in
25 other, separate files that shall be deemed personnel records for
26 purposes of the California Public Records Act (Chapter 3.5
27 (commencing with Section 6250) of Division 7 of Title 1 of the
28 Government Code) and Section 1043 of the Evidence Code.

29 (1) Management of the peace *officer's* or custodial officer's
30 employing agency shall have access to the files described in this
31 subdivision.

32 (2) Management of the peace *officer's* or custodial officer's
33 employing agency shall not use the complaints contained in these
34 separate files for punitive or promotional purposes except as
35 permitted by subdivision (f) of Section 3304 of the Government
36 Code.

37 (3) Management of the peace *officer's* or custodial officer's
38 employing agency may identify any officer who is subject to the
39 complaints maintained in these files which require counseling or
40 additional training. However, if a complaint is removed from the

1 officer's personnel file, any reference in the personnel file to the
2 complaint or to a separate file shall be deleted.

3 (d) As used in this section, the following definitions apply:

4 (1) "General personnel file" means the file maintained by the
5 agency containing the primary records specific to each peace
6 *officer's* or custodial officer's employment, including evaluations,
7 assignments, status changes, and imposed discipline.

8 (2) "Unfounded" means that the investigation clearly established
9 that the allegation is not true.

10 (3) "Exonerated" means that the investigation clearly established
11 that the actions of the peace *officer* or custodial officer that formed
12 the basis for the complaint are not violations of law or department
13 policy.