

Assembly Bill No. 1016

Passed the Assembly April 13, 1998

Chief Clerk of the Assembly

Passed the Senate March 30, 1998

Secretary of the Senate

This bill was received by the Governor this ____ day
of _____, 1998, at ____ o'clock __M.

Private Secretary of the Governor



CHAPTER _____

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1016, Hertzberg. Peace officers: personnel files.

Existing law requires each department or agency in this state that employs peace officers to establish a procedure to investigate citizens' complaints against the personnel of these departments or agencies, and to make a written description of the procedure available to the public. Existing law also requires that complaints shall be retained for a period of at least 5 years.

Existing law further provides that complaints by members of the public that are determined by the peace officer's employing agency to be frivolous shall not be maintained in that officer's general personnel file, but these complaints and any reports or findings relating to these complaints shall be retained in other, separate files that shall be deemed personnel records for purposes of the California Public Records Act and provisions relating to the discovery and disclosure of a peace officer's personnel records.

This bill would make complaints that are determined to be unfounded or exonerated subject to these provisions and accessible to management of the peace officer's employing agency pursuant to specified conditions. The bill would provide that all complaints retained under these provisions may be maintained either in the officer's general personnel file or in a separate file designated by the department or agency. The bill would require that, prior to any official determination regarding promotion, transfer, or disciplinary action by an officer's employing department or agency, any complaints determined to be frivolous, as defined, unfounded, or exonerated shall be removed from the officer's general personnel file and placed in a separate file designated by the department or agency. The imposition of these additional requirements



on local agencies 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, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

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.

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

SECTION 1. Section 832.5 of the Penal Code is amended to read:

832.5. (a) Each department or agency in this state that employs peace officers shall establish a procedure to investigate complaints by members of the public against the personnel of these departments or agencies, and shall make a written description of the procedure available to the public.

(b) Complaints and any reports or findings relating to these complaints shall 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 department or agency as provided by department or agency policy, in accordance with all applicable requirements of law. However, prior to any official determination regarding promotion, transfer, or disciplinary action by an officer's employing department or agency, the complaints described by subdivision (c) shall be removed from the officer's general personnel file and placed in separate file designated by the department or agency, in accordance with all applicable requirements of law.



(c) Complaints by members of the public that are determined by the peace officer's employing agency to be frivolous, as defined in Section 128.5 of the Code of Civil Procedure, 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 (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and Section 1043 of the Evidence Code.

(1) Management of the peace officer's employing agency shall have access to the files described in this subdivision.

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

(3) Management of the peace officer's employing agency may identify any officer who is subject to the complaints maintained in these files which require counseling or additional training. However, if a complaint is removed from the officer's personnel file, any reference in the personnel file to the complaint or to a separate file shall be deleted.

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

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

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

(3) "Exonerated" means that the investigation clearly established that the actions of the peace officer that



formed the basis for the complaint are not violations of law or department policy.

SEC. 2. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.



Approved _____, 1998

Governor

