

AMENDED IN ASSEMBLY APRIL 5, 2000

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 2559

Introduced by Assembly Member Cardoza

February 24, 2000

An act to amend ~~Sections 1043 and 1045~~ *Section 1043* of the Evidence Code, and to amend ~~Section 3303~~ of the ~~Government Code~~, *Code*, relating to personnel records.

LEGISLATIVE COUNSEL'S DIGEST

AB 2559, as amended, Cardoza. Personnel Records: peace officers: evidence.

(1) Existing law sets forth the procedure to discover or compel disclosure of peace officer personnel records, as specified.

This bill would limit that procedure to motions by a criminal defendant or his or her attorney for discovery or disclosure of peace officer personnel records; and would enact a separate procedure for discovery or disclosure of peace officer personnel records and records of citizen complaints sought by a local prosecutor or the Attorney General which would limit such discovery or disclosure to records or information from records sought for the purpose of complying with the duty to disclose exculpatory evidence to the defense. The bill would further limit this disclosure to notification of the disposition of complaints in these records which are determined by the custodian of the records to contain evidence of sustained unlawful conduct by the peace officer in the course of duty.

~~The bill would also provide for the exclusion from disclosure of complaints sustained solely on the basis of a statement compelled from a peace officer under duress, coercion, or threat of punitive action.~~

~~Existing law bars the admissibility in a subsequent civil proceeding of any statement made by a public safety officer under duress, coercion, or threat of punishment, as specified. The California Constitution also provides that relevant evidence shall not be excluded from a criminal proceeding except pursuant to a statute enacted by a ²/₃ vote of each house of the Legislature.~~

~~This bill would extend the above provision to criminal proceedings in which the officer is a witness.~~

The bill would impose a state-mandated local program by requiring new duties of custodial officers of peace officer personnel records.

(2) 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.

Vote: ²/₃ majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

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

- 1 SECTION 1. Section 1043 of the Evidence Code is
- 2 amended to read:
- 3 1043. (a) In any case in which discovery or disclosure
- 4 is sought by a criminal defendant or his or her attorney
- 5 of peace officer personnel records or records maintained
- 6 pursuant to Section 832.5 of the Penal Code or
- 7 information from those records, the criminal defendant



1 or his or her attorney seeking the discovery or disclosure
2 shall file a written motion with the appropriate court or
3 administrative body upon written notice to the
4 governmental agency which has custody and control of
5 the records. The written notice shall be given at the times
6 prescribed by subdivision (b) of Section 1005 of the Code
7 of Civil Procedure. Upon receipt of the notice the
8 governmental agency served shall immediately notify the
9 individual whose records are sought.

10 (b) The motion shall include all of the following:

11 (1) Identification of the proceeding in which
12 discovery or disclosure is sought, the party seeking
13 discovery or disclosure, the peace officer whose records
14 are sought, the governmental agency which has custody
15 and control of the records, and the time and place at
16 which the motion for discovery or disclosure shall be
17 heard.

18 (2) A description of the type of records or information
19 sought.

20 (3) Affidavits showing good cause for the discovery or
21 disclosure sought, setting forth the materiality thereof to
22 the subject matter involved in the pending litigation and
23 stating upon reasonable belief that the governmental
24 agency identified has the records or information from the
25 records.

26 (c) No hearing upon a motion for discovery or
27 disclosure shall be held without full compliance with the
28 notice provisions of this section except upon a showing by
29 the moving party of good cause for noncompliance, or
30 upon a waiver of the hearing by the governmental agency
31 identified as having the records.

32 (d) In any case in which a local prosecuting attorney
33 or the Attorney General seeks discovery or disclosure of
34 peace officer personnel records or records maintained
35 pursuant to Section 832.5 of the Penal Code or
36 information from those records for the purpose of
37 complying with subdivision (e) of Section 1054.1 of the
38 Penal Code, the local prosecuting attorney or Attorney
39 General shall make a written request to the
40 governmental agency that has custody and control of the



1 records and concurrently provide a copy thereof to the
2 involved peace officer.

3 (e) The written request under subdivision (d) shall
4 include all of the following:

5 (1) Identification of the proceeding in which
6 discovery or disclosure is sought, the party seeking
7 discovery or disclosure, the peace officer or officers
8 whose records are sought, *the materiality of those officers*
9 *to the proceeding*, and the time and place for an
10 examination of the records in conformity with Section
11 915.

12 (2) A description of the type of records or information
13 sought, limited to records of ~~complaints, investigations of~~
14 ~~complaints, and~~ discipline imposed as a result of ~~these~~
15 ~~investigations, concerning~~ an event or transaction in
16 which the peace officer participated, or which he or she
17 perceived, and pertaining to the manner in which he or
18 she performed his or her duties.

19 (3) An affidavit from the requesting party stating the
20 request is made for the purpose of complying with
21 subdivision (e) of with Section 1054.1 of the Penal Code
22 and setting forth the materiality thereof to the subject
23 matter involved in the pending litigation.

24 (f) Upon receipt of a written request submitted in
25 conformity with subdivision (e), the custodian of records
26 or other representative of the agency from which the
27 records are sought shall review the records and
28 determine whether the records contain evidence of
29 sustained allegations of unlawful conduct by the peace
30 officer while acting within the course and scope of his or
31 her duty or other evidence which reasonably appears to
32 be responsive to the request.

33 (1) Upon determining the records contain evidence of
34 sustained allegations of ~~unlawful conduct~~ *misconduct* by
35 the peace officer while acting within the course and scope
36 of his or her duty or other evidence which reasonably
37 appears to be responsive to the request made by the local
38 prosecuting attorney or Attorney General, the custodian
39 of records shall make written notification to the
40 requesting party and the peace officer or officers whose



1 records are sought that this information is contained in
2 the records.

3 (2) The written notification shall state only the
4 disposition (sustained, not sustained, exonerated, or
5 unfounded) of any complaint made against the peace
6 officer or officers, and the date the information was
7 entered in the record. In the event a complaint was
8 sustained, the written notification shall state whether the
9 complaint was sustained based solely on a statement
10 compelled from the peace officer pursuant to Section
11 3303 of the Government Code.

12 (g) In the event the custodian of the records states that
13 records relevant to the issues and defenses identified by
14 the local prosecuting attorney or the Attorney General
15 exist, the law enforcement agency and the prosecuting
16 agency shall apply jointly to the court for an in camera
17 review of the records pursuant to this section. The
18 application need not be by way of a formal motion. The
19 involved peace officer or officers shall be notified
20 immediately of the application. The records shall not be
21 disclosed to the local prosecutor or Attorney General
22 except as provided in Section 1045.

23 ~~SEC. 2. Section 1045 of the Evidence Code is~~
24 ~~amended to read:~~

25 ~~1045. (a) Nothing in this article shall be construed to~~
26 ~~affect the right of access to records of complaints, or~~
27 ~~investigations of complaints, or discipline imposed as a~~
28 ~~result of such investigations, concerning an event or~~
29 ~~transaction in which the peace officer participated, or~~
30 ~~which he or she perceived, and pertaining to the manner~~
31 ~~in which he or she performed his or her duties, provided~~
32 ~~that such information is relevant to the subject matter~~
33 ~~involved in the pending litigation.~~

34 ~~(b) In determining relevance the court shall examine~~
35 ~~the information in chambers in conformity with Section~~
36 ~~915, and shall exclude from disclosure:~~

37 ~~(1) Information consisting of complaints concerning~~
38 ~~conduct occurring more than five years before the event~~
39 ~~or transaction which is the subject of the litigation in aid~~
40 ~~of which discovery or disclosure is sought.~~



1 ~~(2) In any criminal proceeding the conclusions of any~~
2 ~~officer investigating a complaint filed pursuant to Section~~
3 ~~832.5 of the Penal Code.~~

4 ~~(3) Facts sought to be disclosed which are so remote~~
5 ~~as to make disclosure of little or no practical benefit.~~

6 ~~(4) Any complaint which was sustained based solely on~~
7 ~~a statement compelled from the peace officer pursuant to~~
8 ~~Section 3303 of the Government Code.~~

9 ~~(c) In determining relevance where the issue in~~
10 ~~litigation concerns the policies or pattern of conduct of~~
11 ~~the employing agency, the court shall consider whether~~
12 ~~the information sought may be obtained from other~~
13 ~~records maintained by the employing agency in the~~
14 ~~regular course of agency business which would not~~
15 ~~necessitate the disclosure of individual personnel records.~~

16 ~~(d) Upon motion seasonably made by the~~
17 ~~governmental agency which has custody or control of the~~
18 ~~records to be examined or by the officer whose records~~
19 ~~are sought, and upon good cause showing the necessity~~
20 ~~thereof, the court may make any order which justice~~
21 ~~requires to protect the officer or agency from~~
22 ~~unnecessary annoyance, embarrassment or oppression.~~

23 ~~(e) The court shall, in any case or proceeding~~
24 ~~permitting the disclosure or discovery of any peace~~
25 ~~officer records requested pursuant to Section 1043, order~~
26 ~~that the records disclosed or discovered may not be used~~
27 ~~for any purpose other than a court proceeding pursuant~~
28 ~~to applicable law.~~

29 ~~SEC. 3. Section 3303 of the Government Code is~~
30 ~~amended to read:~~

31 ~~3303. When any public safety officer is under~~
32 ~~investigation and subjected to interrogation by his or her~~
33 ~~commanding officer, or any other member of the~~
34 ~~employing public safety department, that could lead to~~
35 ~~punitive action, the interrogation shall be conducted~~
36 ~~under the following conditions. For the purpose of this~~
37 ~~chapter, punitive action means any action that may lead~~
38 ~~to dismissal, demotion, suspension, reduction in salary,~~
39 ~~written reprimand, or transfer for purposes of~~
40 ~~punishment.~~



1 ~~(a) The interrogation shall be conducted at a~~
2 ~~reasonable hour, preferably at a time when the public~~
3 ~~safety officer is on duty, or during the normal waking~~
4 ~~hours for the public safety officer, unless the seriousness~~
5 ~~of the investigation requires otherwise. If the~~
6 ~~interrogation does occur during off-duty time of the~~
7 ~~public safety officer being interrogated, the public safety~~
8 ~~officer shall be compensated for any off-duty time in~~
9 ~~accordance with regular department procedures, and the~~
10 ~~public safety officer shall not be released from~~
11 ~~employment for any work missed.~~

12 ~~(b) The public safety officer under investigation shall~~
13 ~~be informed prior to the interrogation of the rank, name,~~
14 ~~and command of the officer in charge of the~~
15 ~~interrogation, the interrogating officers, and all other~~
16 ~~persons to be present during the interrogation. All~~
17 ~~questions directed to the public safety officer under~~
18 ~~interrogation shall be asked by and through no more than~~
19 ~~two interrogators at one time.~~

20 ~~(c) The public safety officer under investigation shall~~
21 ~~be informed of the nature of the investigation prior to any~~
22 ~~interrogation.~~

23 ~~(d) The interrogating session shall be for a reasonable~~
24 ~~period taking into consideration gravity and complexity~~
25 ~~of the issue being investigated. The person under~~
26 ~~interrogation shall be allowed to attend to his or her own~~
27 ~~personal physical necessities.~~

28 ~~(e) The public safety officer under interrogation shall~~
29 ~~not be subjected to offensive language or threatened with~~
30 ~~punitive action, except that an officer refusing to respond~~
31 ~~to questions or submit to interrogations shall be informed~~
32 ~~that failure to answer questions directly related to the~~
33 ~~investigation or interrogation may result in punitive~~
34 ~~action. No promise of reward shall be made as an~~
35 ~~inducement to answering any question. The employer~~
36 ~~shall not cause the public safety officer under~~
37 ~~interrogation to be subjected to visits by the press or news~~
38 ~~media without his or her express consent nor shall his or~~
39 ~~her home address or photograph be given to the press or~~
40 ~~news media without his or her express consent.~~



1 ~~(f) No statement made during interrogation by a~~
2 ~~public safety officer under duress, coercion, or threat of~~
3 ~~punitive action shall be admissible in any subsequent civil~~
4 ~~proceeding or in any criminal proceeding in which the~~
5 ~~officer is a witness. This subdivision is subject to the~~
6 ~~following qualifications:~~

7 ~~(1) This subdivision shall not limit the use of~~
8 ~~statements made by a public safety officer when the~~
9 ~~employing public safety department is seeking civil~~
10 ~~sanctions against any public safety officer, including~~
11 ~~disciplinary action brought under Section 19572.~~

12 ~~(2) This subdivision shall not prevent the admissibility~~
13 ~~of statements made by the public safety officer under~~
14 ~~interrogation in any civil action, including administrative~~
15 ~~actions, brought by that public safety officer, or that~~
16 ~~officer's exclusive representative, arising out of a~~
17 ~~disciplinary action.~~

18 ~~(3) This subdivision shall not prevent statements~~
19 ~~made by a public safety officer under interrogation from~~
20 ~~being used to impeach the testimony of that officer after~~
21 ~~an in camera review to determine whether the~~
22 ~~statements serve to impeach the testimony of the officer.~~

23 ~~(4) This subdivision shall not otherwise prevent the~~
24 ~~admissibility of statements made by a public safety officer~~
25 ~~under interrogation if that officer subsequently is~~
26 ~~deceased.~~

27 ~~(g) The complete interrogation of a public safety~~
28 ~~officer may be recorded. If a tape recording is made of the~~
29 ~~interrogation, the public safety officer shall have access to~~
30 ~~the tape if any further proceedings are contemplated or~~
31 ~~prior to any further interrogation at a subsequent time.~~
32 ~~The public safety officer shall be entitled to a transcribed~~
33 ~~copy of any notes made by a stenographer or to any~~
34 ~~reports or complaints made by investigators or other~~
35 ~~persons, except those which are deemed by the~~
36 ~~investigating agency to be confidential. No notes or~~
37 ~~reports that are deemed to be confidential may be~~
38 ~~entered in the officer's personnel file. The public safety~~
39 ~~officer being interrogated shall have the right to bring his~~



1 or her own recording device and record any and all
2 aspects of the interrogation.

3 (h) If prior to or during the interrogation of a public
4 safety officer it is deemed that he or she may be charged
5 with a criminal offense, he or she shall be immediately
6 informed of his or her constitutional rights.

7 (i) Upon the filing of a formal written statement of
8 charges, or whenever an interrogation focuses on matters
9 that are likely to result in punitive action against any
10 public safety officer, that officer, at his or her request,
11 shall have the right to be represented by a representative
12 of his or her choice who may be present at all times during
13 the interrogation. The representative shall not be a
14 person subject to the same investigation. The
15 representative shall not be required to disclose, nor be
16 subject to any punitive action for refusing to disclose, any
17 information received from the officer under
18 investigation for noncriminal matters.

19 This section shall not apply to any interrogation of a
20 public safety officer in the normal course of duty,
21 counseling, instruction, or informal verbal
22 admonishment by, or other routine or unplanned contact
23 with, a supervisor or any other public safety officer, nor
24 shall this section apply to an investigation concerned
25 solely and directly with alleged criminal activities.

26 (j) No public safety officer shall be loaned or
27 temporarily reassigned to a location or duty assignment
28 if a sworn member of his or her department would not
29 normally be sent to that location or would not normally
30 be given that duty assignment under similar
31 circumstances.

32 ~~SEC. 4.~~

33 *SEC. 2.* Notwithstanding Section 17610 of the
34 Government Code, if the Commission on State Mandates
35 determines that this act contains costs mandated by the
36 state, reimbursement to local agencies and school
37 districts for those costs shall be made pursuant to Part 7
38 (commencing with Section 17500) of Division 4 of Title
39 2 of the Government Code. If the statewide cost of the
40 claim for reimbursement does not exceed one million



1 dollars (\$1,000,000), reimbursement shall be made from
2 the State Mandates Claims Fund.

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