
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: AB 1291 **Hearing Date:** June 20, 2023
Author: McCarty
Version: April 3, 2023
Urgency: No **Fiscal:** Yes
Consultant: AB

Subject: *Law enforcement settlements and judgments: reporting*

HISTORY

Source: Author

Prior Legislation: AB 603 (McCarty, 2021), vetoed by the Governor
SB 16 (Skinner, Ch. 402, Stats. of 2021)
AB 48 (Lorena Gonzalez, Ch. 404, Stats. of 2021)
AB 1314 (McCarty, 2020), not heard in Senate Public Safety
SB 978 (Bradford, Ch. 978, Stats. of 2018)
SB 1421 (Skinner, Ch. 988, Stats of 2018)

Support: ACLU California Action; California Public Defenders Association; Policing Project; Prosecutors Alliance California; San Francisco Public Defender

Opposition: None known

Assembly Floor Vote: 74 - 0

PURPOSE

The purpose of this bill is to require law enforcement agencies, including the California Highway Patrol, to annually post specified information on their websites regarding settlements and judgments resulting from allegation of improper police conduct.

Existing law provides that the people have the right of access to information concerning the conduct of the people’s business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny. (Cal. Const., Art. I, § 3, subd. (b)(1).)

Existing law defines “public records” to include any writing containing information relating to the conduct of the public’s business, prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. (Gov. Code, § 7920.530.)

Existing law states that the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people’s business is a fundamental and necessary right of every person in this state. (Gov. Code, § 7921.000.)

Existing law provides general categories of documents or information that are exempt from disclosure, essentially due to the character of the information, and unless it is shown that the public's interest in disclosure outweighs the public's interest in non-disclosure of the information, the exempt information may be withheld by the public agency with custody of the information. (Gov. Code, § 7930.100 et seq.)

Existing law does not require, under the CPRA, disclosure of investigations conducted by the office of the Attorney General and the Department of Justice, the Office of Emergency Services and any state or local police agency, or any investigatory or security files compiled by any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes. (Gov. Code, § 7923.600, subd. (a).)

Existing law requires an agency to justify withholding any record by demonstrating that the record in question is exempt under express provisions of the CPRA, or that on the facts of a particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record. (Gov. Code, § 7922.000.)

Existing law requires the public agency, when a member of the public requests to inspect a public record or obtain a copy of a public record, in order to assist the member of the public make a focused and effective request that reasonably describes an identifiable record or records, to do all of the following, to the extent reasonable under the circumstances:

- Assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated.
- Describe the information technology and physical location in which the records exist.
- Provide suggestions for overcoming any practical basis for denying access to the records or information sought. (Gov. Code, § 7922.600, subd. (a)(1)-(3).)

Existing law provides that, unless otherwise specified, the personnel records of peace officers and custodial officers and records maintained by a state, or local agency or information obtained from these records, are confidential and shall not be disclosed in any criminal or civil proceeding, except as specified. (Pen. Code, § 832.7, subd. (a).)

Existing law provides that specified peace officer or custodial officer personnel records and records maintained by a state or local agency are not confidential and must be made available for public inspection under the CPRA. (Pen. Code, § 832.7, subd. (b)(1).)

Existing law authorizes an agency to redact a record of police misconduct, including personal identifying information, where on the facts of the particular case the public interest served by not disclosing the information clearly outweighs the public interest served by disclosure of the information. (Pen. Code, § 832.7, subd. (b)(7).)

Existing law provides that an agency may withhold a record of an incident otherwise subject to disclosure if there is an active criminal or administrative investigation, as specified. (Pen. Code § 832.7(b)(8).)

Existing law requires the Commission on Peace Officer Standards and Training and each local law enforcement agency to conspicuously post on their internet websites all current standards, policies, practices, operating procedures and education training materials that would otherwise be available if a public request was made pursuant to the CPRA. (Pen. Code § 13650.)

Existing law requires each law enforcement agency, within 60 days of each incident, to publish a summary on its internet website of all instances in which a peace officer employed by that agency uses a kinetic energy projectile or chemical agent. (Pen. Code § 13652.1)

This bill establishes various legislative findings and declarations as follows:

- On May 25, 2020, George Floyd was murdered by Minneapolis police when an officer held his knee on his neck for 8 minutes and 46 seconds, resulting in his death.
- The outcry over this murder has resulted in demands for police reform across the state and the nation.
- For decades, Californians have experienced horrific civil rights violations, injuries, and death at the hands of peace officers.
- These incidents often result in civil lawsuits and payouts made by cities, counties, and the state to the civilians harmed by the actions of police officers, sheriffs' deputies, and other peace officers. These settlements and judgments are often agreed to in closed sessions at city council and board of supervisors meetings, and settlements can range from thousands to millions of dollars.
- Despite the burden these payouts have on local jurisdictions, there is little publicly available information about the costs to taxpayers of law enforcement liability, the manner in which governments budget for and pay lawsuits involving law enforcement, and the financial impact of these arrangements on law enforcement agency budgets.
- Throughout the country, municipalities with the 20 largest police departments have paid over \$2 billion since 2015 in misconduct claims. Of those 20 municipalities, four are located in California. The County of Los Angeles paid \$238,300,000, the City of Los Angeles paid \$172,200,000, the City and County of San Francisco paid \$22,000,000, and the City of San Diego paid \$12,500,000.
- State law stipulates that individual officers do not pay towards these settlements. Instead, these settlements typically come from the general fund of the municipality involved, or if the law enforcement agency itself pays, then it is part of a specific budget line item set aside for settling officer misconduct litigation. Municipal budgets allocate funds to their law enforcement agencies with the expectation that they will be financially liable for their wrongdoing, year over year.
- Cities and counties typically use liability insurance or general obligation bonds procured by the municipality or state to pay for police settlements. Cities and counties pay annually for liability insurance, which is also used to cover trip-and-fall injuries and

workers' compensation claims, to cover the costs of settlements involving police misconduct, brutality, or death of a civilian by a peace officer.

- In 2019, the City of Sacramento paid an insurance company \$2,000,000 in taxpayer dollars to secure up to \$35,000,000 for settlements and judgments. Among the payouts made in 2019 was the city's largest ever settlement, involving \$5,200,000 for a man who was so brutally beaten by a police officer that he requires intensive, lifelong medical care.
- In 2017, the Los Angeles Police Department cost taxpayers \$80,000,000 settling lawsuits involving officer misconduct. Similarly, the County of Los Angeles paid out over \$50,000,000 in misconduct claims from 2015 to 2016, inclusive, the majority of which were excessive force claims. Shootings alone cost the County of Los Angeles \$60,000,000 between 2011 to 2016, inclusive.
- During the 2018–19 fiscal year, the County of Los Angeles paid over \$16,000,000 in judgments against the Sheriff's Department, another \$30,000,000 in settlements against the department, and incurred an additional \$80,000,000 in litigation expenses on behalf of the department. According to the county's annual report, "six of the nine most expensive settlements in FY 2018–19 stemmed from Law Enforcement excessive-force shooting fatalities involving the Sheriff's Department."
- In addition to liability insurance, the board of supervisors or city council can authorize a general obligation bond to pay for these incidents of police misconduct and brutality. These types of general obligation bonds are so common that they are called Police Brutality Bonds by the Wall Street firms who profit from them. These bonds are paid for by taxpayers and take years to pay off due to additional fees and high interest rates.
- In 2009 and 2010, the City of Los Angeles issued \$71,400,000 in Police Brutality Bonds. Banks and other private firms collected more than \$1,000,000 in issuance fees on these two bonds. By the time these bonds are paid off, taxpayers will have handed over more than \$18,000,000 to investors, allowing Wall Street to profit from the death or serious injury of a civilian at the hands of a police officer.
- It is the intent of the Legislature to enact legislation to establish transparency requirements surrounding police use of force settlements and judgments against police and sheriff's departments.

This bill requires each municipality, on or before February 1 of each year, to post on its internet website law enforcement settlements and judgments of fifty thousand dollars (\$50,000) or more during the previous year, resulting from allegations of improper police conduct, including, but not limited to, claims involving the use of force, assault and battery, malicious prosecution, or false arrest or imprisonment, broken down by individual settlement or judgment.

This bill requires the municipality to include all of the following information for each action posted:

- The court in which the action was filed;
- The name of the law firm representing the plaintiff;
- The name of the law firm or agency representing each defendant;
- The date the action was filed;
- Whether the plaintiff alleged improper police conduct, including, but not limited to, claims involving use of force, assault and battery, malicious prosecution, or false arrest or imprisonment; and,
- If the action has been resolved, the date on which it was resolved, the manner in which it was resolved, and whether the resolution included a payment to the plaintiff by the city, and, if so, the amount of the payment.

This bill requires each municipality, on or before February 1 of each year, to post on its internet website all of the following:

- The total number of settlements and judgments related to improper police conduct during the previous year irrespective of the settlement or judgment amount;
- The total amount of money paid for cases of improper police conduct;
- The estimated costs budgeted in the current budget for law enforcement misconduct settlements and judgments, if these costs are included in the municipality's budget; and,
- The actual amount of money paid for law enforcement misconduct settlements and judgements in the fiscal year immediately prior to the budget year.

This bill requires the municipality, if any such settlements or judgments are paid for using municipal bonds, to post on its internet website the amount of the bond, the time it will take the bond to mature, interest and fees paid on the bond, and the total future cost of the bond.

This bill requires the municipality to post on its internet website any such settlements or judgments that were paid by insurance, broken down by individual settlement or judgment, and the amount of any premiums paid by the municipality for insurance against settlements or judgments resulting from allegations of improper police conduct, as specified.

This bill provides that its provisions shall not be construed to prohibit or interfere with a person from obtaining documents under the CPRA.

This bill defines "municipality" as a city, county, or city and county with a police department or a sheriff's department.

COMMENTS

1. Need for This Bill

According to the Author:

For far too long, cities and counties have spent taxpayer dollars on settlements in police misconduct and excessive use of force cases without proper public disclosure. Many of these settlements are paid through “police brutality bonds” by Wall Street firms that profit from the harmful and tragic experiences of civilians. Shining a light on all government spending is not only the right thing to do, it is critical to increasing public understanding about law enforcement practices and improving police accountability.

2. Public Access to Police Records Generally

In 1968, the Legislature passed the California Public Records Act (CPRA), declaring that “access to information concerning the conduct of the people’s business is a fundamental and necessary right of every person in the state.”¹ The purpose of the CPRA is to prevent secrecy in government and to contribute significantly to the public understanding of government activities.² Under the law, virtually all public records are open to public inspection unless expressly exempted in statute. However, even if a record is not expressly exempted, an agency may refuse to disclose records if on balance, the interest of nondisclosure outweighs disclosure. Generally, “records should be withheld from disclosure only where the public interest served by not making a record public outweighs the public interest served by the general policy of disclosure.”³

In the context of peace officer records, the CPRA contains several relevant exemptions to the general policy requiring disclosure, namely 1) records of complaints to, or investigations conducted by any state or local police agency, 2) personnel records, if disclosure would constitute an unwarranted invasion of personal privacy, and 3) records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including records deemed confidential under state law.⁴ The California Supreme Court has reinforced that the fundamental right to public records access is especially important in the context of law enforcement officers and agencies:

“The public's interest in the qualifications and conduct of peace officers is substantial [...] Peace officers hold one of the most powerful positions in our society; our dependence on them is high and the potential for abuse of power is far from insignificant. A police officer possesses both the authority and the ability to exercise force. Misuse of his authority can result in significant deprivation of constitutional rights and personal freedoms, not to mention bodily injury and financial loss. The

¹ California Government Code §7921.000

² *City of San Jose v. Superior Court* (1999) 74 Cal.App.4th 1008, 1016-1017.

³ Gov. Code, § 7922.000

⁴ Gov. Code, §§ 7923.600; 7927.700, 7927.705

public has a legitimate interest not only in the conduct of individual officers, but also in how [...] local law enforcement agencies conduct the public's business.”⁵

Recent years have seen an increase in legislation requiring law enforcement agencies to collect and report specific data and disclose various records and policies to the public. In 2015, AB 953 (Weber, Ch. 466, Stats. of 2015) and AB 71 (Rodriguez, Ch. 462, Stats. of 2015) generally required law enforcement to report data on police stops and use of force incidents, respectively. In 2018, the Legislature adopted SB 1421 (Skinner, Ch. 988, Stats. of 2018), required that certain records relating to police misconduct and serious uses of force be made publicly available under the CPRA. In 2021, the Legislature passed SB 16 (Skinner, Ch. 402, Stats. of 2021), which expanded the applicability of SB 1421 by exempting four additional categories of peace officer records from existing confidentiality requirements.⁶ This bill seeks to build upon these recent efforts by ensuring the public’s access to information relating to settlements with and judgements against local law enforcement agencies arising out of allegations of improper police conduct.

3. Recent Veto of Similar Legislation – AB 603 (McCarty, 2021)

This is not the Author’s first attempt at advancing this legislation. A substantially similar bill was introduced by the Author in 2020 (AB 1314, McCarty, 2020), although it never received a hearing in this committee. In 2021, however, the Legislature passed AB 603 (McCarty), which was similar to this bill. AB 603 passed this committee by a vote of 5-0. Despite near unanimous support in the Legislature, the Governor vetoed the measure, writing:

I am returning Assembly Bill 603 without my signature.

This bill would require municipalities to annually post on their internet websites specified information relating to settlements and judgments resulting from allegations of improper police conduct. The information will include amounts paid, broken down by individual settlement and judgment, and information on bonds used to finance use of force settlement and judgment payments.

The vast majority of the information that this legislation would require to be posted on department websites is already available through a Public Records Act request or in court records. Given this, I am concerned that this legislation is not only unnecessary, but that it will also have potentially significant General Fund costs associated with the imposition of a state-reimbursable mandate on local law enforcement agencies.

While similar, there are several important differences between AB 603 and this bill. First, while AB 603 required municipalities to post on their websites information about settlements or judgments for police misconduct in any amount, this bill would require disclosure of only those settlements or judgments that exceed \$50,000. Second, this bill would require municipalities to post information on the previous year’s settlements and judgements, the total amount paid for those actions, the estimated costs of police

⁵ *Commission on Peace Officer Standards & Training v. Superior Court*, 42 Cal. 4th 278 (2007), at 299-300.

⁶ See Penal Code §832.7

misconduct budgeted for in the municipality's current budget, and the actual amount of money spent from the previous budget on misconduct settlements and judgments. AB 603 did not require municipalities to post this information. Finally, this bill would eliminate the provision in AB 603 requiring the California State Transportation Agency to post information on settlements and judgments against the California Highway Patrol. It should be noted that the differences between this measure and its predecessor do not really address the substance of the concerns raised by the Governor in his AB 603 veto message.

4. Argument in Support

According to ACLU California Action, which writes in support:

Current law allows individuals to file civil suits or claims against police and sheriffs for use of force misconduct that results in death or serious bodily injury. These lawsuits are filed against local governments to recoup damages for injuries or loss of life. Law enforcement officers are not responsible for the economic damages of lawsuits. Instead, settlements typically come from the city or county's general fund. The damages awarded to victims in these cases can become costly. Municipalities often settle claims out of court to avoid further scrutiny, and almost always in closed City Council or Board of Supervisors meetings. While taxpayers pay for settlements, the public will often only learn about them from news outlets. Detailed information about the financial implications of police misconduct settlements is neither uniformly collected, routinely reported, easy to find, or always provided in response to Public Records Act (PRA) requests.

Because these settlements are paid by tax dollars, Californians have the right, and the understandable desire to know how cities and counties are spending hard-earned tax dollars. Furthermore, law enforcement misconduct settlements result in cities and counties hemorrhaging fiscal and other resources that could be used for more productive, critical projects like parks, infrastructure, or libraries. By requiring municipalities to publicly post financial details of law enforcement use-of-force settlements, AB 1291 is a step towards ensuring transparency and accountability of government spending and law enforcement practices.

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