
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair
2021 - 2022 Regular

Bill No: AB 603 **Hearing Date:** June 22, 2021
Author: McCarty
Version: February 11, 2021
Urgency: No **Fiscal:** Yes
Consultant: KW

Subject: *Law enforcement settlements and judgments: reporting*

HISTORY

Source: Author

Prior Legislation: AB 1314 (McCarty), Failed Senate Public Safety Committee 2020
AB 2746 (Gabriel), Vetoed by Governor 2020
SB 978 (Bradford), Ch. 978, Stats. 2018
SB 98 (Alpert), Ch. 12, Stats. 2004

Support: ACLU of California; All Home; California Attorneys for Criminal Justice;
California Department of Insurance; California Faculty Association; California
Immigrant Policy Center; California Public Defenders Association; Consumer
Attorneys of California; Initiate Justice; Oakland Privacy

Opposition: None known

Assembly Floor Vote: 77 - 0

PURPOSE

The purpose of this bill is to require law enforcement agencies, including the California Highway Patrol, to annually post information about money spent on the agency such as settlements, judgements and other information on their websites.

Existing law establishes the California Public Records Act (CPRA) and provides 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, § 6250 et seq.)

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 the particular case, the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record. (Government Code § 6255.)

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

1. 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.
2. Describe the information technology and physical location in which the records exist.
3. Provide suggestions for overcoming any practical basis for denying access to the records or information sought. (Gov. Code, § 6253.1, subd. (a).)

Existing law establishes the Department of the California Highway Patrol (CHP) within the Transportation Agency. (Veh. Code, § 2100.)

Existing law states all members of the CHP have the powers of a peace officer described in Section 830.2 of the Penal Code. (Veh. Code, § 2409.)

This bill defines “municipality” as a city, county, or city and county with a police department or a sheriff’s department

This bill would require each municipality to post on its website how much money was spent on law enforcement settlements and judgements in the previous year.

This bill clarifies that these settlements and judgements can be results of police misconduct including, excessive use of force, assault and battery, false arrest and more.

This bill would require these municipalities to make these posts on or before February 1 of each year.

This bill establishes that with each action posted on the website, all of the following shall be included:

- 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.
- 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 establishes that for any settlement or judgement paid for with municipal bonds, the municipality must post the amount, maturity and interest of the bond on its website.

This bill establishes that for any settlement or judgement paid for with insurance, the amount of any premiums paid by the municipality for insurance against settlements or judgments shall be posted on the website.

This bill requires the Transportation Agency to provide the same information with regards to the Department of the California Highway Patrol (CHP).

COMMENTS

1. Need for This Bill:

According to the author:

Current law allows citizens to file civil suits or claims against police or sheriffs for misconduct or use of force incidents that result in death or serious bodily injury. These lawsuits are filed against local governments to recoup damages for injuries or loss of life. The damages awarded to victims in these cases can become costly for municipalities.

The officers in question are not responsible for the economic damages of these lawsuits. Instead, these settlements typically come from the general fund of the city involved, or if the law enforcement agency itself pays, then it is part of a specific line item set aside for settling officer misconduct litigation. That means that city budgets allocate funds to their law enforcement agencies with the expectation that they will be financially liable for their wrongdoing, year over year.

Commonly, municipalities settle these claims out of court to avoid further scrutiny, and almost always in closed sessions of city council or board of supervisor's meetings. While these settlements are paid for by taxpayers, the public will often only hear about these settlements from newspapers. Information about the financial implications of these police misconduct settlements are difficult to find and require Public Records Act (PRA) requests to get details.

Many cities and counties have liability insurance to cover costs of incidents such as trip-and-fall cases, government human resources cases, and workers' compensation claims. Shockingly, cities are also allowed to use liability insurance to cover claims of police misconduct, brutality, or death of a civilian by law enforcement.

Every year, the City of Sacramento pays an insurance company to secure funds for liability payouts. In 2019, the City of Sacramento paid this company \$2 million in taxpayer dollars to ensure the city has up to \$35 million available for settlements and judgments. Among the payouts made in 2019 was the city's largest ever settlement - \$5.2 million for a man who was so brutally beaten by a police officer, he will need intensive life-long medical care.

If a municipality has exhausted their liability insurance, the board of supervisors or city council can authorize a general obligation bond to pay for these incidents of police officer misconduct and brutality. These judgment obligation bonds are so common however, they are called Police Brutality Bonds by the Wall Street firms

who profit from them. These bonds – paid for by taxpayers – take years to pay off due to underwriting fees and high interest rates charged by investment firms. Furthermore, bondholders must be paid back. Therefore, bonds may receive funding over other municipal services and cities may raise taxes to cover these expenses.

In 2009 and 2010, Los Angeles issued \$71.4 million in police brutality bonds. Banks and other private firms collected more than \$1 million in issuance fees on these two bonds. By the time these bonds are paid off, taxpayers will have handed over more than \$18 million to investors.

AB 603 provides much needed transparency and places this responsibility at the feet of the municipalities that use public funds for these settlements. Municipalities would also be required to disclose the specific funding sources used in each case.

2. Law Enforcement Transparency in California

American police are generally granted certain protections under law due to their status as public employees; almost half of all states keep police personnel records confidential, for example. California however is one of only three states to afford legal protections specifically to law enforcement officers, a policy that began with Gov. Jerry Brown's decision to censor officer records from public viewing nearly 40 years ago. Since then, the state Supreme Court has consistently advanced police secrecy to such an extent that even in fatal police misconduct cases, such as that involving Stephon Clark, the public is almost entirely left in the dark regarding the most basic facts and proceedings. Updates on cases regarding officer use of inappropriate force, racial bias, sexual assault, lying on duty, and fatal shootings are all hidden from the California public, only to surface during official review proceedings...

Loosening California law enforcement's effective monopoly on the officer misconduct process is a valuable step toward solidifying peaceful relations between officers and their communities. Currently, police misconduct is treated mostly in secret, leading to a lack of civilian trust in law enforcement, especially in localities directly affected by serious incidents. A breakdown of citizen relations with police forces not only endangers individual officers, but also increases the likelihood that grave misconduct will occur again due to officers feeling mentally devalued and physically insecure while on duty. Law enforcement secrecy is contradictory to a beneficial relationship between police officers and their communities, and without its statewide elimination, Californians can only await more of the same tragically familiar misconduct headlines.¹

3. Argument in Support

According to Oakland Privacy:

Assembly Bill 603 is an important bill. As advocates with many local governments, we can attest first hand to the difficulties community members have with getting a comprehensive understanding of how litigation against the cities and counties where they live impacts municipal budgeting. Law enforcement misconduct is not the only

¹ <https://bpr.berkeley.edu/2018/04/24/secret-police-californias-law-enforcement-transparency-problem/>

source of expensive municipal litigation, but it is a significant one and it has a measurable impact on funding for city services. As cities and counties have ongoing conversations about re-imagining public safety as well as the painful budget deficits that many may face as the costs of the pandemic become due, community wide clarity about budgetary items is essential for these conversations to be productive and for community members to have meaningful input into decision making.

It is understandable that cities and counties, as well as CHP, often provide information that, at best, is partial and can be difficult to parse. Litigation is a sensitive and privileged matter and the relevant conversations largely occur in closed sessions. There is no particular incentive for police agencies to want to broadcast the costs of actions or mistakes that have led to financial settlements, and often such items are consigned to quick votes on crowded consent calendars that few pay attention to.

While these rationales are understandable, they leave out the most salient interest, which is the taxpayers who foot the bill for settlements. Whether that is in the form of higher fees or cuts in services they use and rely upon, unexpected and costly settlements have direct impacts on residents. Having to put together a metaphorical jigsaw puzzle to understand how public money is being spent is not a burden we should place on the public. The burden of clearly accounting for how public money is spent should be placed on the municipalities. Assembly Bill 603 makes sure that in the area of police misconduct and how many dollars it ends up costing, public reporting is clear, thorough and accessible.

-- END --