

RESOLUTION 06-06-2007

DIGEST

Police Disciplinary Records: Restoration of Limited Public Access

Amends Government Code sections 832.5 and 832.7 to provide greater access to information related to police misconduct.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Government Code sections 832.5 and 832.7 to provide greater access to information related to police misconduct. This resolution should be approved in principle because the public should have access to more information about police misconduct.

The California Supreme Court recently ruled that the public does not have the right to access information about sustained complaints about police misconduct and the discipline that flows from such misconduct. (*Copley Press v. Superior Court* (2006) 39 Cal.4th 1272.) This decision has also called into question the legality of public civilian review boards, and has allowed police associations to challenge oversight agencies that have been effective watchdogs over police activities for years. The effect of *Copley Press* has been to limit public oversight in several of the largest police forces in the state, including Los Angeles, San Francisco, and Oakland.

Most public employees are accountable for their misconduct. Even more significantly, the *Copley Press* decision has made it difficult or nearly impossible for the public to learn about the sustained misconduct and discipline of police officers and correctional officers. Police officers, like every other public official, should be accountable to the public, but the *Copley Press* case has provided protection for police officers that no other public employees enjoy.

Examining police records to determine misconduct and the extent to which officers have been disciplined, reassigned, or even promoted are essential to the process of public accountability for those who are employed as police and correctional officers. Making such information more readily available is part of the deterrence to misconduct and gives the public greater confidence in their law enforcement agencies.

TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend Government Code Sections 832.5 and 832.7, to read as follows:

- 1 §832.5
- 2 It is the intent of the Legislature in enacting this legislation to overturn the California

3 Supreme Court decision in *Copley Press vs. Superior Court* 39 Cal 4th 1272 (2006) and to
4 restore public access to peace officer records and to restore public access to meetings and
5 hearings that were open to the public prior to the *Copley* decision.

6 (a)(1) Each department or agency in this state that employs peace officers shall
7 establish a procedure to investigate complaints by members of the public against the
8 personnel of these departments or agencies, and shall make a written description of the
9 procedure available to the public.

10 (2) Each department or agency that employs custodial officers, as defined in Section
11 831.5, may establish a procedure to investigate complaints by members of the public against
12 those custodial officers employed by these departments or agencies, provided however, that
13 any procedure so established shall comply with the provisions of this section and with the
14 provisions of Section 832.7.

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

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

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

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

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

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

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

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

49 (3) "Exonerated" means that the investigation clearly established that the actions of
50 the peace or custodial officer that formed the basis for the complaint are not violations of
51 law or department policy.

52 (4) "Department" or "agency" means the particular department or agency that
53 directly employs peace or custodial officers and which has established a procedure to
54 investigate complaints by members of the public against its personnel pursuant to
55 subdivision (a) and that is primarily responsible for the initial investigation of the complaints
56 and the maintenance of its investigative records. The term does not include any other
57 governmental body that reviews the investigations, findings or employment actions of a
58 department or agency.

59 § 832.7.

60
61 (a) Peace officer or custodial officer personnel records and records maintained by
62 any state or local agency pursuant to Section 832.5, or information obtained from these
63 records, are confidential and shall not be disclosed in any criminal or civil proceeding except
64 by discovery pursuant to Sections 1043 and 1046 of the Evidence Code. This section shall
65 not apply to investigations or proceedings concerning the conduct of peace officers or
66 custodial officers, or an agency or department that employs those officers, conducted by a
67 grand jury, a district attorney's office, or the Attorney General's office.

68 (b) Notwithstanding subdivision (a), a department or agency shall release to the
69 complaining party a copy of his or her own statements at the time the complaint is filed.

70 (c) Notwithstanding subdivision (a), a department or agency that employs peace or
71 custodial officers may disseminate data regarding the number, type, or disposition of
72 complaints (sustained, not sustained, exonerated, or unfounded) made against its officers if
73 that information is in a form which does not identify the individuals involved.

74 (d) Notwithstanding subdivision (a), a department or agency that employs peace or
75 custodial officers may release factual information concerning a disciplinary investigation if
76 the officer who is the subject of the disciplinary investigation, or the officer's agent or
77 representative, publicly makes a statement he or she knows to be false concerning the
78 investigation or the imposition of disciplinary action. Information may not be disclosed by
79 the peace or custodial officer's employer unless the false statement was published by an
80 established medium of communication, such as television, radio, or a newspaper.
81 Disclosure of factual information by the employing agency pursuant to this subdivision is
82 limited to facts contained in the officer's personnel file concerning the disciplinary
83 investigation or imposition of disciplinary action that specifically refute the false statements
84 made public by the peace or custodial officer or his or her agent or representative.

85 (e) Notwithstanding subdivision (a), with respect to each complaint charge,
86 disciplinary matter, or internal investigation that results in either discipline, a sustained
87 complaint or charge, or a finding that an officer's conduct was out of policy, a department or
88 agency that employs peace or custodial officers shall release:

- 89 (1) The name and badge number of the subject officer;
- 90 (2) The name and current address of the complainant, unless the complainant
91 requests it be kept confidential;
- 92 (3) A summary of the factual allegations contained in the complaint or other
93 charging document;
- 94 (4) The charges brought against the officer;

95 (5) The factual findings with respect to the conduct at issue;
96 (6) The discipline imposed or corrective action taken.
97 (f) Notwithstanding subdivision (a), in cases in which a civilian review board or
98 other governmental body outside the department or agency recommends imposition of
99 discipline or makes or recommends a finding that an officer's conduct was out of policy or
100 that a complaint was founded, and such finding is overturned or such recommendation not
101 followed by the department or agency that employs the peace officer, the department or
102 agency may in its discretion release any information already released by the outside body as
103 well as a summary of the grounds for overturning the outside body's finding or not following
104 its recommendation.
105 (g)(1) The department or agency shall provide written notification to the complaining
106 party of the disposition of the complaint within 30 days of the disposition.
107 (2) The notification described in this subdivision shall not be conclusive or binding
108 or admissible as evidence in any separate or subsequent action or proceeding brought before
109 an arbitrator, court, or judge of this state or the United States.
110 (h) Nothing in this section shall affect the discovery or disclosure of information
111 contained in a peace or custodial officer's personnel file pursuant to Section 1043 of the
112 Evidence Code.
113 (i) Information disclosable pursuant to this section shall be made available upon
114 request pursuant to the Section 6250 et seq. of the Government Code.

(Proposed new language underlined; language to be deleted stricken)

PROPOSER: Bar Association of San Francisco

STATEMENT OF REASONS:

Existing Law: Penal Code sections 832.5 and 832.7, as interpreted by the recent California Supreme Court decision in *Copley Press vs. Superior Court* 39 Cal 4th 1272 (2006), prevent public access to information about sustained complaints about police misconduct and discipline that flows from such misconduct. The *Copley Press* decision has also called into question the legality of public civilian review boards and has been used by police officer associations to challenge oversight agencies that have been in place for decades. Under current law, among public employees, only peace officers are granted such protections.

This Resolution: This resolution supports legislation in the California legislature aimed at overturning the *Copley Press* decision and providing greater access to information related to police misconduct.

The Problem: Under current state law as interpreted by the recent *Copley Press* decision, the public is foreclosed from learning about sustained misconduct and discipline of police and correctional officers. The impact of this decision is far reaching. It prevents the public and press from learning about misconduct by public officials, evaluating the extent to which officers that engage in misconduct are promoted, reassigned, or disciplined, and will significantly undermine efforts to achieve police accountability. Dissemination of information serves as a deterrent against misconduct and generates public confidence in the ability of government to hold police

accountable when necessary. The case has also been used to close down access to records or limit the scope of civilian oversight agencies throughout the state in cities including Oakland, Berkeley, Los Angeles, and San Francisco.

IMPACT STATEMENT

This resolution does not affect any other law, statute or rule.

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