

SENATE BILL 1421
AND
ASSEMBLY BILL 748

MONICA KILAITA

DEPUTY CITY ATTORNEY

LONG BEACH OFFICE OF THE CITY ATTORNEY

Senate Bill 1421

Background

- ▶ Effective January 1, 2019; amended Penal Code § 832.7
- ▶ Before SB 1421
 - ❖ Peace officer personnel records were deemed highly confidential and not available via public records requests
 - ❖ Could only be disclosed pursuant to successful *Pitchess* Motion or in an investigation or proceeding regarding an officer's alleged misconduct conducted by a grand jury, district attorney's office, or the Attorney General's Office
- ▶ After SB 1421
 - ❖ Certain peace officer personnel files (and other records related to eligible incidents) are now subject to disclosure via a public records request

LEGISLATIVE INTENT

“The public has a right to know all about serious police misconduct, as well as about officer-involved shootings and other serious uses of force. Concealing crucial public safety matters such as officer violations of civilians’ rights, or inquiries into deadly use of force incidents, undercuts the public’s faith in the legitimacy of law enforcement, makes it harder for tens of thousands of hardworking peace officers to do their jobs, and endangers public safety.”

SB 1421 Eligible Incidents

1. Officer-involved shootings at a person
2. Uses of force which result in death or great bodily injury
3. Sustained findings of sexual assault involving a member of the public
4. Sustained findings of dishonesty

“Great Bodily Injury”

- ▶ Fails to define “great bodily injury”
- ▶ “Great bodily injury” means “a significant or substantial physical injury.” Whether an injury meets this definition “is a question of fact and not law.” (Pen. Code 12002.7(f); *People v. Escobar* (1992) 12 Cal.4th 740.)
- ▶ “Serious bodily injury” is “bodily injury that involves a substantial risk of death, unconsciousness, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member or organ.” (Gov. Code 12525.2(d).)

GBI continued

- ▶ Great Bodily Injury and Serious Bodily Injury are not one in the same
- ▶ Thus, agencies must decide on their own definition

Sustained Findings of Sexual Assault Involving a Member of the Public

- ▶ Requires the disposition of the allegation to be sustained
- ▶ **“Sexual Assault”**
 - ❖ The commission or attempted initiation of a sexual act **with a member of the public** by means of force, threat, coercion, extortion, offer of leniency or other official favor, or under the color of authority.
 - ❖ The propositioning for or commission of any sexual act while on duty is considered a sexual assault.
- ▶ **“Member of the Public”**
 - ❖ Any person not employed by the officer’s employing agency
 - ❖ Includes any participant in a cadet, explorer, or other youth program affiliated with the agency

Sustained Findings of Dishonesty

- ▶ Requires the disposition of the allegation be sustained
- ▶ Cases of dishonesty are limited to (1) perjury, (2) false statements, (3) false reports, (4) destruction of evidence, (5) falsifying evidence, or (6) concealing evidence for:
 - ❖ An officer directly relating to their duties in the reporting, investigation, or prosecution of a crime; or
 - ❖ An officer when being dishonest about another officer's misconduct directly related to the reporting, investigation, or prosecution of a crime.

Definition of “Sustained” Under SB 1421

A final determination by an investigating agency, commission, board, hearing officer, or arbitrator **following an investigation and opportunity for an administrative appeal** that the actions of the peace officer or custodial officer were found to violate law or department policy.

Types of Records Subject to Release

- ▶ All investigative reports
- ▶ Photographic, audio, and video evidence
- ▶ Transcripts or recordings of interviews
- ▶ Autopsy reports
- ▶ All materials compiled and presented for review to the district attorney
- ▶ All materials compiled and presented for review to any person or body charged with determining:
 1. Whether to file criminal charges against an officer in connection with an incident; or
 2. Whether the officer's action was consistent with law and agency policy for purposes of discipline or administrative action; or
 3. What discipline to impose or corrective action to take
- ▶ Documents setting forth findings or recommended findings
- ▶ Disciplinary records relating to the incident or other corrective action

Delays for Disclosure

- ▶ The release of records for incidents involving uses of force or officer involved shootings can be delayed for expressly specified time periods due to:
 - ❖ Active **criminal** investigations/proceedings
 - ❖ Active **administrative** investigations
- ▶ The release of records for incidents involving sexual assaults or dishonesty will be delayed until there has been a sustained finding after all administrative remedies have been exhausted

Redactions

- ❑ Privacy reasons
 - Personal data or information
 - Names of complainants and witnesses to protect their anonymity

- ❑ Confidential medical, financial, or other information if:
 - Disclosure is prohibited by federal law
 - OR
 - The unwarranted invasion of personal privacy clearly outweighs the strong public interest in disclosure of the records

- ❑ Where there is a specific, articulable, and particularized reason to believe that disclosure of the record would pose a significant danger to the physical safety of the officer or another person

Assembly Bill

748

Background

- ▶ Effective July 1, 2019; amended Government Code § 6254(f)
- ▶ **Before AB 748**
 - ❖ Law enforcement agencies throughout California handled PRA requests for audio/video footage (e.g., Body Worn Camera footage) differently
 - ❖ Some agencies withheld footage due to ongoing criminal or administrative investigations or the public interest exemption; some agencies released footage; and some did both.
- ▶ **After AB 748**
 - ❖ Video and audio footage for “critical incidents” must be disclosed pursuant to a PRA request

“Critical Incident”

- ▶ An incident involving the **discharge of a firearm** at a person by a peace or custodial officer
- ▶ An incident in which the **use of force** by a peace or custodial officer resulted in **death or great bodily injury**

Delays for Disclosure

- ▶ The release of records for critical incidents may be delayed for expressly specified time periods due to:
 - ❖ Active **criminal** investigations/proceedings
 - ❖ Active **administrative** investigations
- ▶ To delay, disclosure must substantially interfere with the investigation

Redactions

- ▶ If the public interest in withholding the record clearly outweighs the public interest in disclosure because release would violate the reasonable expectation of privacy of a person depicted, the recording may be redacted as follows:
 - ▶ Blurred or distorted, but shall not interfere with viewer ability to fully, completely, and accurately comprehend events captured
- ▶ If redaction cannot adequately protect privacy of the subject, may be withheld but must still be given to:
 - ▶ Subject/ their representative, unless it would interfere with active criminal or administrative investigation

Assembly Bill

953

Racial and Identity Profiling Act (RIPA)

- ▶ Among other things, this Act requires law enforcement agencies to annually report certain information from “stops” to the California Department of Justice including but not limited to:
 - ▶ Date/time/location of stop
 - ▶ Reason for stop
 - ▶ Result of stop
 - ▶ If a warning or citation was issued, and what it was
 - ▶ If an arrest was made, and the offense charged
 - ▶ The perceived race or ethnicity, gender, and approximate age of the person stopped based on the observation and perception of the peace officer making the stop