



Police Commission
City of Oakland

AGENDA REPORT

TO: Police Commissioners

FROM: Rania Adwan
Chief of Staff, Oakland
Police Commission

SUBJECT: State Legislation That Impacts Police Discipline in the City of Oakland

DATE: March 25, 2022

RECOMMENDATION

Staff Recommends The Commission Consider Endorsing AB 2557, Introduced by Assembly Member Mia Bonta on February 17, 2022 to Reform the California Penal Code Provisions that Govern Confidentiality of Police Discipline Records.

EXECUTIVE SUMMARY

This bill would require publication of certain “records and information obtained” from police personnel records that are otherwise mandatorily confidential, per Penal Code Section 832.7 and 832.8, if those records and information are “obtained” for “the purpose of civilian oversight of peace officers.”

The specific language the bill would insert into the state penal code would require public disclosure of records once they are “obtained . . . for the purpose of civilian oversight of peace officers,” which is new legislative language not previously included in prior Senate Bills that sought to achieve the same or a similar goal, including Senate Bill 1019 (Introduced by Senator Romero in 2007) and Senate Bill 1286¹ (Introduced by Senator Mark Leno in 2016).

BACKGROUND / LEGISLATIVE HISTORY

In *Copley Press v. Superior Court* (County of San Diego) (2006) 39 Cal. 4th 1272: The Supreme Court held that the confidentiality of peace officer records extends to an administrative proceeding where the officer is appealing disciplinary action. The Supreme Court also ruled that the language in Penal Code Section 832.7 established a “general condition of confidentiality.”

Based on this Supreme Court precedent, a California Court of Appeal ruled that the City of Berkeley Police Review Commission was required to keep its investigative files confidential and not disclose them to, or discuss them in, public. (*Berkeley Police Ass’n v. City of Berkeley* (2008) 167 Cal.App.4th 385, 388.)

At a Police Commission meeting in February of 2022, the Commission formally considered a resolution to propose changes to the state laws on the books that limit the statutory period to administer police discipline for alleged office misconduct from the moment someone at the

¹ https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB1286

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Department authorized to investigate the misconduct discovers it. As its first target for changes to state law that implicate the Police Commission's oversight authority over sworn officers in Oakland, Commissioners specifically called out Section 832.7 as an important priority item for changing police misconduct investigations across the state of California.

ANALYSIS AND POLICY ALTERNATIVES

Staff should track changes to this state bill through [leginfo](#)² to evaluate amendments, if any, that are introduced to revise Assemblymember Bonta's bill as it makes its way through the Committee hearing process. In particular, staff should track the language that requires publicity of certain records "obtained . . . for the purpose of civilian oversight of peace officers."

FISCAL IMPACT

The endorsement of a state bill comes with no cost.

PUBLIC OUTREACH / INTEREST

Members of the public have argued that "oversight without transparency undermines the credibility of oversight boards, no matter how diligent or representative of the community." Those members of the public would like to see the Commission's oversight work in closed sessions available to the public, which would represent a return to the status quo before the California Supreme Court issued its 2006 decision (which predated the Police Commission and its formation of Discipline Committees). Specifically, the Commission has reviewed advocacy materials that state: "[a]lthough many civilian law enforcement agencies operated openly for decades prior to 2006, since *Copley* was issued, they are now sworn to secrecy in police discipline cases; the public cannot know the complaint allegations, the identity of the accused officers, and the rationale for the findings reached."

SUSTAINABLE OPPORTUNITIES

Economic: There are no formal economic opportunities associated with this report.

Environmental: There are no formal environmental opportunities associated with this report. Race &

Equity: Equity is an essential principle driving constitutional policing and civilian oversight of the Oakland Police Department.

ACTION REQUESTED OF THE COMMISSION

Staff Recommends That the Commission Endorses AB 2557 in its current form and track amendments that are made, if any.

Respectfully submitted,

² https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB2557

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Rania Adwan
Chief of Staff, Oakland Police Commission
In consultation with Counsel, Conor Kennedy

OAKLAND POLICE COMMISSION RESOLUTION

RESOLUTION NO. _____

RESOLUTION IN SUPPORT OF CALIFORNIA STATE ASSEMBLY BILL 2557 (BONTA) THAT ENHANCES PUBLIC TRANSPARENCY AROUND THE WORK OF CIVILIAN POLICE OVERSIGHT AGENCIES IN THE STATE OF CALIFORNIA

WHEREAS, in *Copley Press, Inc. v. Superior Court* (2006) 39 Cal.4th 1272, the California Supreme Court decided that certain records and information obtained from civilian law enforcement oversight agencies will be treated as if they were confidential personnel records held by police departments; and

WHEREAS as these records are considered confidential, agencies have been required to withhold almost all such records involving investigations of officer misconduct; and;

WHEREAS, the *Copley Press* decision prevents the public from learning the extent of any discipline, but for some minimal exceptions, that may have been imposed as a result of misconduct; and

WHEREAS, prior to 2006, civilian law enforcement oversight agencies operated with more transparency than was reflected in the rules set in place by the *Copley Press* decision; and

WHEREAS, AB 2557 will allow civilian law enforcement agencies to operate transparently as they did prior to 2006; now, therefore be it

WHEREAS, a direct legislative repeal of the *Copley Press* decision by the state legislature is an appropriate step to improve the state's approach to transparency around police oversight; therefore be it

RESOLVED: that the Police Commission hereby endorses AB 2557 and urges the California State Legislature and Governor Gavin Newsom to support its enactment into law.

ON MARCH 31, 2022, AT A MEETING OF THE OAKLAND POLICE COMMISSION IN OAKLAND, CALIFORNIA

PASSED BY THE FOLLOWING VOTE:

AYES –

NOES –

ABSENT –

ABSTENTION –

ATTEST: _____

RANIA ADWAN
Chief of Staff
Oakland Police Commission
City of Oakland, California

DRAFT

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RANIA ADWAN
Chief of Staff
Oakland Police Commission
City of Oakland, California

DRAFT

[Organizational Letterhead or Logo]

<MONTH DAY, 2022>

The Honorable Reginald Byron Jones-
Sawyer, Sr.
California State Assembly
1021 O St, Suite 5210
Sacramento, CA 94249-0018

Subject: SUPPORT – AB 2557 (Bonta)

Dear Chairman Jones-Sawyer,

On behalf of <ORGANIZATION NAME>, we write in support of AB 2557 (Mia Bonta), a bill that allows civilian law enforcement oversight agencies to conduct their investigations into police misconduct with much needed transparency.

----- INSERT A PARAGRAPH ABOUT YOUR ORGANIZATION, WHO YOU REPRESENT, WHERE YOU ARE LOCATED, AND WHAT YOU DO -----

Civilian oversight agencies operate as a needed check on law enforcement. At least 25 California municipalities, including most of our largest cities, have established civilian law enforcement oversight boards to provide necessary public oversight of policing activities in the community.

Unfortunately, because of a 2006 California Supreme Court decision, *Copley Press, Inc. v. Superior Court*, (2006) 39 Cal.4th 1272, these agencies have been required to withhold from the public, most if not all, records of investigations of law enforcement misconduct. This is because the court in *Copley Press Inc. v. Superior Court* held that records and information obtained from records of civilian law enforcement oversight agencies are confidential personnel records, and cannot be disclosed under the California Public Records Act.

Prior to that decision, civilian law enforcement oversight agencies, many of which have been around for decades, operated with greater transparency. For example, the Oakland Police Commission, conducted public hearings and released investigative reports of complaints against police officers. This 16 year-old ruling from the California Supreme Court has caused the work of California civilian oversight boards to be unnecessarily constrained by confidentiality requirements that are antithetical to the public work those boards are mandated to undertake.

The civil unrest in the wake of the callous murder of George Floyd at the hands of former Minneapolis Police Officer Derek Chauvin, and numerous other similar atrocities committed by law enforcement highlight the urgent need for the public to have access to these misconduct

[Organizational Letterhead or Logo]

investigations. The public has come to scrutinize community policing activities with the manifest realization that the historic and systemic abuses of police authority disproportionately fall on minority and at-risk communities. As a glaring statistic evidencing this point, Black and Latinx individuals make up a combined 25% of the United States population but comprise over 75% of the victims of fatal police shootings in the past 5 years. These include the recent killings of Sean Monterrosa by the Vallejo Police Department and of Erik Salgado by the California Highway Patrol. It is more important, now than ever, that decisions concerning community policing occur in the full light of day so that our communities can understand precisely the scope of the systemic problem of abusive police tactics and what our local governments can do to best eliminate those abuses.

AB 2557 allows civilian oversight agencies to once again operate in the light of day by legislatively repealing the *Copley Press, Inc.* decision. By passing AB 2557, not only will California show its commitment to current civilian oversight agencies but will also encourage other jurisdictions to create civilian oversight agencies to ensure that law enforcement in California is truly working for all people.

For these reasons, [Organization Name] supports AB 2557 (Bonta). Please contact us at <PHONE NUMBER & EMAIL> if you have questions about our position.

Sincerely,

<SIGNATURE>

<NAME> <TITLE/ROLE>

<ORGANIZATION NAME>