

# LAURIE CAPITELLI

Berkeley City Council  
District 5

CONSENT CALENDAR  
May 22, 2007

To: Honorable Mayor Bates  
Members of the City Council

From: Councilmember Laurie Capitelli

Subject: Supporting SB 1019; Public Hearing Process In Citizen Police Review Proceedings

## RECOMMENDATION

Request the City Manger send a letter to our State Senator, Don Perata, and to Senator Gloria Ramirez, bill author, on behalf of the City Council, expressing support for SB 1019, proposed legislation that would allow civilian review boards and oversight agencies that operate outside of a police department to hold public hearings regarding complaints about police misconduct.

## FINANCIAL IMPLICATIONS

Staff time to write letter.

## BACKGROUND

At their March 27, 2007 meeting, the City Council unanimously voted to support and send a letter regarding AB 1648, legislation that would restore the opening hearings process in certain citizen police review proceedings, as were held in Berkeley under the Police Review Commission. (See attached Council agenda item from 3/27/07 for Background information.). Senate Bill 1019 is a similar proposal. Introduced by Senator Gloria Romero from Los Angeles, it has already passed the Senate's Public Safety Committee. It is expected to be approved by the Senate before the Assembly version, AB 1648, makes it out of committee.

The Senate analysis of the bill can be found at:

[http://info.sen.ca.gov/pub/07-08/bill/sen/sb\\_1001-1050/sb\\_1019\\_cfa\\_20070416\\_152032\\_sen\\_comm.html](http://info.sen.ca.gov/pub/07-08/bill/sen/sb_1001-1050/sb_1019_cfa_20070416_152032_sen_comm.html)

## CONTACT PERSON

Councilmember Laurie Capitelli, District 5 981-7150

## ATTACHMENTS:

1. City Council Agenda Item #14, March 27, 2007; "Supporting AB 1648"
2. Draft Revision of Section 832 of the California Penal Code.

# LAURIE CAPITELLI

Berkeley City Council  
District 5

## CONSENT CALENDAR

March 27, 2007

To: Honorable Mayor and  
Members of the City Council

From: Councilmember Laurie Capitelli

Subject: **SUPPORTING AB 1648; OPEN HEARING PROCESS IN CITIZEN  
POLICE REVIEW PROCEEDINGS**

### RECOMMENDATION

Request the City Manger send a letter to our Assemblymember, on behalf of the City Council, expressing support for AB 1648: proposed legislation that would allow civilian review boards and oversight agencies that operate outside of a police department to hold public hearings regarding complaints about police misconduct.

### FINANCIAL IMPLICATIONS

Staff time to write letter.

### BACKGROUND

As a result of the recent California Supreme Court decision in *Copley Press v. Superior Court*, California law now prohibits the public from learning about police officers who have been disciplined because of misconduct. Hearings and records that were previously public have now been closed. In Berkeley, under this decision, the Police Review Commission may no longer hold hearings open to the public, nor can their records and findings be made available to the public.

Unlike all other public employees, the public is prevented by state law from learning about serious police misconduct and any discipline that came as a result of misconduct. This prevents the public from learning about the extent to which problems exist within the police department, but also from learning about how management addresses misconduct when it occurs.

A lack of transparency and openness makes it more difficult for police agencies to foster trust in the community and ultimately damages police-community relations.

Assemblymember Mark Leno has proposed legislation in Sacramento that would overturn the Court's decision in the *Copley* case, and restore the opening hearings process in certain citizen police review proceedings, as are held in Berkeley. AB 1648 provides greater access to information in the following ways:

- Allows civilian review boards and oversight agencies that operate outside of a police department to hold public hearings regarding complaints about police misconduct, as they were able to do before *Copley Press*.
- Provides that basic information about sustained police disciplinary cases including the name and badge of the officer, a summary of the facts, and the disciplinary outcome shall not be confidential.
- For cases that have not been sustained but where another governmental agency (i.e. a police commission, civilian review board, independent auditor, etc) has found misconduct or a violation of policy, allows the police chief to release internal documents supporting the department's conclusion.
- Provides that these records may be obtained under the California Public Records Act.

This bill is currently supported by the California Newspaper Publishers Association, the American Civil Liberties Union of Northern California, the American Civil Liberties Union of Southern California, and People United for a Better Oakland (PUEBLO).

#### CONTACT PERSON

Councilmember Laurie Capitelli, District 5 981-7150

#### ATTACHMENTS:

Draft Revision of Section 832 of the California Penal Code.



AMENDED IN SENATE MARCH 26, 2007

**SENATE BILL**

**No. 1019**

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**Introduced by Senator Romero**

February 23, 2007

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An act to amend Section ~~†~~ 832.7 of the Penal Code, relating to ~~crime~~  
*peace officer records*.

LEGISLATIVE COUNSEL'S DIGEST

SB 1019, as amended, Romero. ~~Crime: Penal Code. Peace officer records: confidentiality.~~

*Existing law generally regulates the confidentiality of various personnel records relating to peace and custodial officers.*

*This bill would state the intent of the Legislature to abrogate the California Supreme Court decision in Copley Press, Inc. v. Superior Court and to restore public access to peace officer records and meetings that were open prior to the Copley Press decision.*

*This bill would provide that notwithstanding specified statutory provisions or the holding in Copley Press, Inc. v. Superior Court, any charter city may elect, through an ordinance duly enacted, as specified, to follow the practices it followed before the Copley Press decision with respect to the release of limited information regarding certain personnel investigations.*

*This bill would provide that notwithstanding the confidential nature of peace and custodial officer complaints, as specified, the employing agency may release other specified information.*

*This bill would specify the means by which requests for disclosure of confidential information shall be made.*

*By imposing additional duties on local law enforcement agencies in connection with peace and custodial officer discipline, this bill would impose a state-mandated local program.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.*

~~Existing law designates specified statutes to be known as The Penal Code of California, and is divided into four parts.~~

~~This bill would make a technical, nonsubstantive change to that provision:~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.  
State-mandated local program: ~~no~~-yes.

*The people of the State of California do enact as follows:*

1     SECTION 1. *Section 832.7 of the Penal Code is amended to*  
2 *read:*

3     832.7. (a) (1) *Peace officer or custodial officer personnel*  
4 *records and records maintained by any state or local agency*  
5 *pursuant to Section 832.5, or information obtained from these*  
6 *records, are confidential and shall not be disclosed in any criminal*  
7 *or civil proceeding except by discovery pursuant to Sections 1043*  
8 *and 1046 of the Evidence Code. This section shall not apply to*  
9 *investigations or proceedings concerning the conduct of peace*  
10 *officers or custodial officers, or an agency or department that*  
11 *employs those officers, conducted by a grand jury, a district*  
12 *attorney's office, or the Attorney General's office, civilian review*  
13 *boards, personnel boards, police commissions, or civil service*  
14 *commissions.*

15     (2) *It is the intent of the Legislature in enacting the act amending*  
16 *this section to abrogate the California Supreme Court case of*  
17 *Copley Press, Inc. v. Superior Court (2006) 39 Cal.4th 1272, to*  
18 *restore public access to peace officer records, and to restore public*  
19 *access to meetings and hearings that were open to the public prior*  
20 *to the Copley Press decision.*

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

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

10 (d) Notwithstanding subdivision (a), a department or agency  
11 that employs peace or custodial officers may release factual  
12 information concerning a disciplinary investigation if the officer  
13 who is the subject of the disciplinary investigation, or the officer's  
14 agent or representative, publicly makes a statement he or she knows  
15 to be false concerning the investigation or the imposition of  
16 disciplinary action. Information may not be disclosed by the peace  
17 or custodial officer's employer unless the false statement was  
18 published by an established medium of communication, such as  
19 television, radio, or a newspaper. Disclosure of factual information  
20 by the employing agency pursuant to this subdivision is limited  
21 to facts contained in the officer's personnel file concerning the  
22 disciplinary investigation or imposition of disciplinary action that  
23 specifically refute the false statements made public by the peace  
24 or custodial officer or his or her agent or representative.

25 *(e) Notwithstanding any provision of this chapter or the holding*  
26 *in Copley Press, Inc. v. Superior Court (2006) 39 Cal.4th 1272*  
27 *interpreting any provision of this chapter, any charter city may*  
28 *elect, through an ordinance duly enacted, to follow the practices*  
29 *it followed before the Copley Press decision with respect to the*  
30 *release of limited information regarding certain personnel*  
31 *investigations. If a charter city so elects, the city's legislative body*  
32 *must find, based on the presentation of substantial evidence, that*  
33 *the practices to be enacted and followed were followed by the city*  
34 *before the Copley Press decision was final.*

35 *(f) Notwithstanding subdivision (a), with respect to each*  
36 *sustained complaint, charge, disciplinary matter, or internal*  
37 *investigation where the discipline imposed is either suspension,*  
38 *demotion, removal, or other separation of the peace officer from*  
39 *service with the department (other than by resignation), a*

1 department or agency that employs peace or custodial officers  
2 may release any of the following:

3 (1) The name and badge number of the subject officer.

4 (2) The charges brought against the officer.

5 (3) The discipline sought by the office.

6 (4) The name and current address of the complainant, unless  
7 the complainant requests it be kept confidential.

8 (5) The factual findings with respect to the conduct at issue.

9 (6) The discipline imposed or corrective action taken.

10 (g) Notwithstanding subdivision (a), in cases in which a civilian  
11 review board or other governmental body outside the department  
12 or agency recommends imposition of discipline or makes or  
13 recommends a finding that an officer's conduct was out of policy  
14 or that a complaint was founded, and the finding is overturned or  
15 the recommendation is not followed by the department or agency  
16 that employs the peace officer, the department or agency may, in  
17 its discretion, release any information already released by the  
18 outside body, as well as a summary of the grounds for overturning  
19 the outside body's finding or not following its recommendation.

20 (e)

21 (h) (1) The department or agency shall provide written  
22 notification to the complaining party of the disposition of the  
23 complaint within 30 days of the disposition.

24 (2) The notification described in this subdivision shall not be  
25 conclusive or binding or admissible as evidence in any separate  
26 or subsequent action or proceeding brought before an arbitrator,  
27 court, or judge of this state or the United States.

28 (f)

29 (i) Nothing in this section shall affect the discovery or disclosure  
30 of information contained in a peace or custodial officer's personnel  
31 file pursuant to Section 1043 of the Evidence Code.

32 (j) Information disclosable pursuant to this section shall be  
33 made available upon request pursuant to Section 6250 of the  
34 Government Code and following.

35 SEC. 2. If the Commission on State Mandates determines that  
36 this act contains costs mandated by the state, reimbursement to  
37 local agencies and school districts for those costs shall be made  
38 pursuant to Part 7 (commencing with Section 17500) of Division  
39 4 of Title 2 of the Government Code.

40 SECTION 1. Section 1 of the Penal Code is amended to read:

1     ~~I. This Act shall be known as, and may be cited as, The PENAL~~  
2     ~~CODE OF CALIFORNIA, and is divided into four parts, as follows:~~  
3     ~~I. OF CRIMES AND PUNISHMENTS.~~  
4     ~~II. OF CRIMINAL PROCEDURE.~~  
5     ~~III. OF THE STATE PRISON AND COUNTY JAILS.~~  
6     ~~IV. OF PREVENTION OF CRIMES AND APPREHENSION~~  
7     ~~OF CRIMINALS.~~

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