

Page numbers for this agenda packet are marked in **blue** to distinguish them from the numbering within individual documents.



**POLICE ACCOUNTABILITY BOARD
SPECIAL MEETING AGENDA PACKET
December 17, 2025
6:30 PM**

Board Members

Joshua Cayetano (Chair)	Leah Wilson (Vice-Chair)
Kitty Calavita	Juliet Leftwich
Randy Wells	Joshua Buswell-Charkow

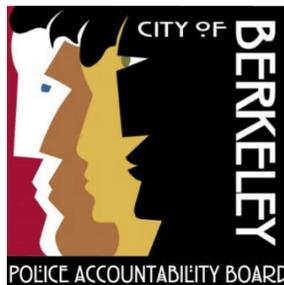
MEETING LOCATION

Office of the Director of Police Accountability
1900 Addison Street, Floor 3
Berkeley, CA 94704

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Item 2

December 17, 2025 PAB Special Meeting Agenda



**POLICE ACCOUNTABILITY BOARD
SPECIAL MEETING AGENDA
WEDNESDAY, DECEMBER 17, 2025
6:30 P.M.**

Board Members

Joshua Cayetano (Chair)
Kitty Calavita
Randy Wells

Leah Wilson (Vice-Chair)
Juliet Leftwich
Joshua Buswell-Charkow

MEETING LOCATION

Office of the Director of Police Accountability
1900 Addison Street, Floor 3
Berkeley, CA 94704

PUBLIC NOTICE

To access the meeting remotely: join from a PC, Mac, iPad, iPhone, or Android device using this URL: <https://us02web.zoom.us/j/86726838117>. If you do not wish for your name to appear on the screen, use the drop-down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon on the screen. To join by phone: Dial **1 669 900 6833** and enter Meeting ID **867 2683 8117**. If you wish to comment during the public comment portion of the agenda, press *9 and wait to be recognized.

LAND ACKNOWLEDGMENT

The City of Berkeley recognizes that the community we live in was built on the territory of xučyun (Huchiun (Hooch-yoon)), the ancestral and unceded land of the Chochenyo (Chochen-yo)-speaking Ohlone (Oh-low-nee) people, the ancestors and descendants of the sovereign Verona Band of Alameda County. This land was and continues to be of great importance to all of the Ohlone Tribes and descendants of the Verona Band. As we begin our meeting tonight, we acknowledge and honor the original inhabitants of Berkeley, the documented 5,000-year history of a vibrant community at the West Berkeley Shellmound, and the Ohlone people who continue to reside in the East Bay. We recognize that Berkeley's residents have and continue to benefit from the use and occupation of this unceded stolen land since the City of Berkeley's incorporation in 1878. As stewards of the laws regulating the City of Berkeley, it is not only vital that we recognize the history of this land, but also recognize that the Ohlone people are present members of Berkeley and other East Bay communities today.

AGENDA

1. CALL TO ORDER AND ROLL CALL (2 MINUTES)

2. APPROVAL OF AGENDA (2 MINUTES)

3. PUBLIC COMMENT (TBD)

Speakers are generally allotted up to three minutes, but may be allotted less time if there are many speakers; they may comment on any matter within the Board's jurisdiction at this time, except confidential personnel matters.

4. APPROVAL OF MINUTES (5 MINUTES)

- a. Minutes for the Special Meeting of December 3, 2025

5. ODPa STAFF REPORT (10 MINUTES)

Announcements, updates, and other items.

6. CHAIR AND BOARD MEMBERS' REPORTS (10 MINUTES)

The Chair and Board Members report on their activities.

7. CHIEF OF POLICE'S REPORT (10 MINUTES)

Crime/cases of interest, community engagement/department events, staffing, training, and other items of interest.

8. SUBCOMMITTEE REPORTS (10 MINUTES)

Report of activities and meeting schedule for all subcommittees, possible appointment or reassignment of members to subcommittees, and additional discussion and action as warranted for the subcommittees listed on the PAB's Subcommittee List included in the agenda packet.

9. DISCUSSION AND ACTION ITEMS (1 HOUR 15 MINUTES)

- a. Presentation by Hans Johnson, Chair of the Los Angeles County Civilian Oversight Commission, on California Assembly Bill 847. (ODPA) – (20 Minutes)
- b. Discussion and action on the annual review of the Use of Force Policy to reflect developing practices and procedures per SB 230 and BPD Policy 300.13 “Policy Review and Updates” (ODPA) – (30 Minutes)
- c. Discussion and action on the proposed 2026 Police Accountability Board Regular Meeting schedule (ODPA) – (10 Minutes)
- d. Discussion and action on the ODPAs’ proposal to implement a complaint triage framework, in consideration of current workload and staffing capacity, to ensure the quality of investigations and timely case completion. (ODPA) – (15 Minutes)

10. PUBLIC COMMENT (TBD)

Speakers are generally allotted up to three minutes but may be allotted less time if there are many speakers; they may comment on any matter within the Board’s jurisdiction at this time, except confidential personnel matters.

11. CLOSED SESSION

CLOSED SESSION ITEMS

Pursuant to the Court’s order in *Berkeley Police Association v. City of Berkeley, et al.*, Alameda County Superior Court Case No. 2002-057569, the Board will recess into closed session to discuss and act on the following matter(s):

- a. Conference With Labor Negotiators; Government Code § 54957.6
Designated representatives: Hansel Aguilar, Director of Police Accountability; Kitty Calavita and Julie Leftwich, Members, Police Accountability Board Regulations Subcommittee
Employee organization: Berkeley Police Association
- b. Case Updates and Recommendations Regarding Complaints Received by the ODPAs:

i. 2023-CI-0016	xiv. 2025-CI-0031
ii. 2024-CI-0004	xv. 2025-CI-0032
iii. 2025-CI-0015	xvi. 2025-CI-0033
iv. 2025-CI-0018	xvii. 2025-CI-0034
v. 2025-CI-0019	xviii. 2025-CI-0035
vi. 2025-CI-0020	xix. 2025-CI-0036
vii. 2025-CI-0021	xx. 2025-CI-0037
viii. 2025-CI-0025	xxi. 2025-CI-0038
ix. 2025-CI-0026	xxii. 2025-CI-0039
x. 2025-CI-0027	xxiii. 2025-CI-0040
xi. 2025-CI-0028	xxiv. 2025-CI-0041
xii. 2025-CI-0029	xxv. 2025-CI-0042
xiii. 2025-CI-0030	

END OF CLOSED SESSION

12. ANNOUNCEMENT OF CLOSED SESSION ACTIONS (1 MINUTE)

13. ADJOURNMENT (1 MINUTE)

Off Agenda Reports

1. Policy, Practice, and Procedure Review Status Report
2. Legislative Updates Relevant to the PAB's Work
3. List of Pending PAB Requests

Communications Disclaimer

Communications to the Police Accountability Board, like all communications to Berkeley boards, commissions, or committees, are public records and will become part of the City's electronic records, which are accessible through the City's website. Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to a City board, commission, or committee, will become part of the public record. If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the Board Secretary. If you do not want your contact information included in the public record, do not include that information in your communication. Please contact the Board Secretary for further information.



Communication Access Information (A.R. 1.12)

To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6418 (V) or 981-6347 (TDD) at least three business days before the meeting date.

SB 343 Disclaimer

Any writings or documents provided to a majority of the Board regarding any item on this agenda will be made available for public inspection at the Office of the Director of Police Accountability, located at 1900 Addison Street, Floor 3, Berkeley, CA 94704

Contact the Director of Police Accountability (Board Secretary) at:

1900 Addison Street, Floor 3, Berkeley, CA 94704

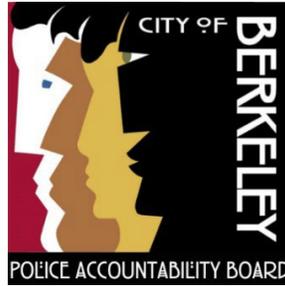
TEL: 510-981-4950 TDD: 510-981-6903 FAX: 510-981-4955

Website: <https://berkeleyca.gov/dpa>

Email: dpa@berkeleyca.gov

Item 4

Minutes for the Regular Meeting of December 3, 2025



**POLICE ACCOUNTABILITY BOARD
SPECIAL MEETING MINUTES
WEDNESDAY, DECEMBER 3, 2025
6:30 P.M.**

Board Members

Joshua Cayetano (Chair)	Leah Wilson (Vice-Chair)
Kitty Calavita	Juliet Leftwich
Randy Wells	Joshua Buswell-Charkow

MEETING LOCATION

Office of the Director of Police Accountability
1900 Addison Street, Floor 3
Berkeley, CA 94704

MINUTES

1. CALL TO ORDER AND ROLL CALL

Present: Board Member Joshua Cayetano (Chair)¹
Board Member Leah Wilson (Vice Chair)
Board Member Kitty Calavita
Board Member Juliet Leftwich
Board Member Randy Wells
Board Member Buswell-Charkow

Absent: None.

ODPA Staff: Hansel Aguilar, Director of Police Accountability
Jose Murillo, ODPA Policy Analyst
Syed Mehdi, ODPA Data Analyst
Daniel Weinberg, ODPA Investigator

BPD Staff: Jen Tate, Deputy Chief

¹ Participating remotely on a Just cause provision

2. APPROVAL OF AGENDA

Motion to approve the agenda with an amendment placing Closed Session Item 11 directly after Item 7 “Chief of Police’s Report” and prior to Item 8 “Subcommittee Report.”

Moved/Second (Wilson/Calavita) Motion carried.

Ayes: Buswell-Charkow, Cayetano, Calavita, Leftwich, Wells, and Wilson.

Noes: None. Abstain: None. Absent: None.

3. PUBLIC COMMENT

0 Physically Present Speakers

0 Virtually Present Speakers

4. APPROVAL OF MINUTES

a. Minutes for the Regular Meeting of November 5, 2025

Motion to approve the minutes for the Regular Meeting of November 5, 2025.

Moved/Second (Leftwich/Calavita) Motion carried.

Ayes: Buswell-Charkow, Cayetano, Calavita, Leftwich, Wells, and Wilson.

Noes: None. Abstain: None. Absent: None.

5. ODPa STAFF REPORT

Director Aguilar provided updates on staffing, operations, and upcoming partnerships. He reported that Investigator Daniel Weinberg, who previously served with the ODPa through an AppleOne contract, has been formally hired as a City of Berkeley employee. He noted that, despite this transition, the office continues to manage a high case workload with only one investigator and may return to the Board with recommendations regarding potential intake adjustments to ensure thorough case review.

Director Aguilar also introduced a new partnership with UC Berkeley’s Social Sector Solutions program. A student team has been assigned to support ODPa’s community outreach efforts and assist in the development of a long-term community survey strategy. The team members shared their professional backgrounds and expressed their commitment to supporting ODPa’s accountability work.

6. CHAIR AND BOARD MEMBERS’ REPORTS

Chair Cayetano reported ongoing meetings with Councilmembers regarding the PAB’s vehicle pursuit policy proposal. No additional activities were noted.

7. CHIEF OF POLICE’S REPORT

Deputy Chief Tate provided updates on recent cases of interest, traffic safety initiatives, and

staffing levels, including two major incidents in November, ongoing retail theft operations, and newly awarded traffic safety grants. She also responded to Board inquiries regarding interagency drone use and an Automated License Plate Reader audit notification.

8. CLOSED SESSION

CLOSED SESSION ITEMS

Pursuant to the Court's order in *Berkeley Police Association v. City of Berkeley, et al.*, Alameda County Superior Court Case No. 2002-057569, the Board will recess into closed session to discuss and act on the following matter(s):

a. Conference With Labor Negotiators; Government Code § 54957.6 Designated representatives: Hansel Aguilar, Director of Police Accountability; Kitty Calavita and Julie Leftwich, Members, Police Accountability Board Regulations Subcommittee

Employee organization: Berkeley Police Association

The PAB received updates on the status of their permanent regulations for investigating complaints.

b. City Manager Dispositions for Cases #2025-CI-0013 & 2025-CI-0014 and Related Timeline Issues.

No formal action taken.

c. Case Updates and Recommendations Regarding Complaints Received by the ODPa:

Motion to accept the ODPa's recommendation for the administrative closure of ODPa complaint #2025-CI-0024.

Moved/Second (Leftwich/Calavita) Motion carried.

Ayes: Buswell-Charkow, Cayetano, Calavita, Leftwich, and Wilson.

Noes: None. Abstain: None. Absent: Wells.²

Motion to accept the ODPa's recommendation in ODPa complaint #2025-CI-0017.

Moved/Second (Wilson/Leftwich) Motion carried.

Ayes: Buswell-Charkow, Cayetano, Calavita, Leftwich, Wells, and Wilson.

Noes: None. Abstain: None. Absent: None.

9. ANNOUNCEMENT OF CLOSED SESSION ACTIONS

Vice Chair Wilson announced closed session actions.

² Board Member Wells was not present in the room during roll-call vote.

10. SUBCOMMITTEE REPORTS

Subcommittees report on their activities since the last PAB regular meeting on November 5, 2025.

11. DISCUSSION AND ACTION ITEMS

- a. Presentation by Hans Johnson, Chair of the Los Angeles County Civilian Oversight Commission, on California Assembly Bill 847.

Discussion of the item was deferred to a future meeting due to the guest speaker's unavailability following the extended closed session. ODPa will coordinate with the presenter to schedule a future presentation date.

- b. Discussion and action regarding the proposed Arrest and Citation Quota Policy

Motion to approve the recommended arrest and citation quota language with the amendment to include “implicit or explicit” quotas, and further direct Board Member Wells to work with Deputy Chief Tate to bring the language to City Council in the form of a formal proposed resolution.

Moved/Second (Wilson/Leftwich) Motion carried.

Ayes: Buswell-Charkow, Cayetano, Calavita, Leftwich, Wells, and Wilson.

Noes: None. Abstain: None. Absent: None.

- c. Discussion and action regarding the City Council-approved acquisition and use of unmanned aerial systems (UAS) by the BPD

No formal action was taken by the PAB. ODPa staff will track the item and prepare the necessary material for the PAB's review under BMC 2.99.030³.

- d. Discussion of Annual Report Presentation to City Council and Potential Action on Related Next Steps, including Community Engagement Efforts

No formal action was taken. ODPa staff presented an overview of the discussion from the November 18, 2025 Council Special Meeting⁴ and summarized the feedback provided by the City Council.

- e. Discussion and action on the proposed 2026 Police Accountability Board Regular Meeting schedule

ODPa staff presented the proposed 2026 meeting calendar to the PAB. The PAB provided feedback and requested an updated proposal for the next meeting.

³ Berkeley Municipal Code 2.99.030 “City Council Approval Requirements”:

<https://berkeley.municipal.codes/BMC/2.99.030>

⁴ Annotated Agenda for the November 18, 2025 Special Meeting of the Berkeley City Council:

<https://berkeleyca.gov/sites/default/files/city-council-meetings/2025-11-18%20Special%20Annotated%20Agenda%20-%20Council.pdf>

f. Discussion and action on the 2026 PAB Annual Retreat and related planning

No formal action was taken. The PAB discussed potential dates and asked ODPa staff to coordinate with the Chair and Vice-Chair to poll members for availability and plan the session logistics.

g. Discussion and action regarding the first reading of the proposed Police Accountability Board Policy Manual to replace the existing PAB Standing Rules

The PAB discussed the proposed draft Policy Manual and provided initial feedback. Board members will forward further comments to the Vice Chair, who will compile a revised redlined version for review. No formal action was taken.

h. Discussion and action on the annual review of the Use of Force Policy to reflect developing practices and procedures per SB 230 and BPD Policy 300.13 "Policy Review and Updates" (ODPA)

Motion To direct the DPA to notify the BPD that the PAB intends to use its December 17 meeting to conduct the required annual convening on the Use of Force Policy pursuant to BPD Policy 300.13, and to provide the Department with relevant ODPa materials in advance to support that discussion.

Moved/Second (Wilson/Calavita) Motion carried.

Ayes: Buswell-Charkow, Cayetano, Calavita, Leftwich, Wells, and Wilson.

Noes: None. Abstain: None. Absent: None.

12. PUBLIC COMMENT

0 Physically Present Speakers.

0 Virtually Present Speakers.

13. ADJOURNMENT

Motion to adjourn. Moved/Second (Wilson/Leftwich). The meeting was adjourned at 9:54 PM by unanimous consent.

Item 8
Subcommittee List

Updated on 12/12/2025



SUBCOMMITTEES LIST

Subcommittee	Board Members	Chair	BPD Reps
Regulations Formed 7-7-21 Renewed 6-7-2023	Calavita Leftwich <u>Public members:</u> Kitt Saginor	N/A	N/A
Policy Reviews Formed 11-08-2023 Scope Expanded 12-11-2024 to include BWC Policy Review	Leftwich Cayetano <u>Public members:</u> Kitt Saginor	Leftwich	Deputy Chief Tate Sgt. Rafferty
Metrics & Operations Formed 02-05-2025 after the Budget & Metrics and Operations & Processes Subcommittees were consolidated into one	Wilson Wells	N/A	N/A
Outreach & Engagement Formed 11-08-2023 Scope Expanded 03-02-2024 Formally "Commendations"	Cayetano Wells	N/A	N/A
Arrest Quota Prohibition Formed 5-21-2025	Edmonds Wells	TBD	TBD

Updated on 12/12/2025

Policies and Practices on Encampment Clearances Former 6-25-2025	Cayetano Wells Wilson	TBD	TBD
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LIAISON LIST¹

Liaison Name	Assignment
Cayetano	Represent the PAB in the EIS Update Process
Wilson	Represent the PAB in FIP-related matters

POLICY COMPLAINTS ASSIGNED TO INDIVIDUAL BOARD MEMBERS²

Policy Review #	Assigned Board Member	Description
2025-PR-0001	Calavita	BPD Policy 1004 "Anti-Retaliation" & BPD Policy 1010 "Personnel Complaints"
2025-PR-0004	Calavita	BPD Policy 426 "Public Recording of Police Activity"

¹ Liaison list does not include topics that were originally assigned to a Board Member but later assigned to a subcommittee.

² This list does not include policy complaints that were originally assigned to an individual Board Member but later assigned to a subcommittee.

Item 9.a.
Assembly Bill No. 847

Assembly Bill No. 847**CHAPTER 383**

An act to amend Section 25303.7 of the Government Code, and to amend Section 832.7 of the Penal Code, relating to peace officers.

[Approved by Governor October 06, 2025. Filed with Secretary of State October 06, 2025.]

LEGISLATIVE COUNSEL'S DIGEST

AB 847, Sharp-Collins. Peace officers: confidentiality of records.

Existing law, the California Public Records Act, authorizes the inspection and copying of any public record except where specifically prohibited by law. Existing law, with specified exemptions, makes confidential the personnel records of peace officers and custodial officers and certain other records maintained by their employing agencies. Existing law provides that this exemption from disclosure does not apply to investigations of these officers or their employing agencies or to related proceedings conducted by a grand jury, a district attorney's office, or the Attorney General's office.

This bill would additionally grant access to the confidential personnel records of peace officers and custodial officers and records maintained by their employing agencies, as specified, to civilian law enforcement oversight boards or commissions during investigations or related proceedings concerning the conduct of those officers. The bill would require those oversight boards to maintain the confidentiality of those records, and would authorize them to conduct closed sessions, as specified, to review confidential records. The bill would additionally authorize a county inspector general to access those personnel records, as specified.

This bill would incorporate additional changes to Section 832.7 of the Penal Code proposed by AB 1178 and AB 1388 to be operative only if this bill and AB 1178 or AB 1388 are enacted and this bill is enacted last.

Digest Key

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

Bill Text**THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:**

SECTION 1. Section 25303.7 of the Government Code is amended to read:

25303.7. (a) (1) A county may create a sheriff oversight board, either by action of the board of supervisors or through a vote of county residents, comprised of civilians to assist the board of supervisors with its duties required pursuant to Section 25303 that relate to the sheriff.

- (2) The members of the sheriff oversight board shall be appointed by the board of supervisors. The board of supervisors shall designate one member to serve as the chairperson of the board.
- (3) The members of the oversight board shall have access to the personnel records of peace officers and custodial officers required for the performance of the commission's oversight duties. The oversight board shall maintain the confidentiality of these records consistent with Section 832.7 of the Penal Code.
- (b) (1) The chair of the sheriff oversight board shall issue a subpoena or subpoena duces tecum in accordance with Sections 1985 to 1985.4, inclusive, of the Code of Civil Procedure whenever the board deems it necessary or important to examine the following:
- (A) Any person as a witness upon any subject matter within the jurisdiction of the board.
 - (B) Any officer of the county in relation to the discharge of their official duties on behalf of the sheriff's department.
 - (C) Any books, papers, or documents in the possession of or under the control of a person or officer relating to the affairs of the sheriff's department.
- (2) A subpoena shall be served in accordance with Sections 1987 and 1988 of the Code of Civil Procedure.
- (3) (A) If a witness fails to attend, or in the case of a subpoena duces tecum, if an item is not produced as set forth therein, the chair or the chair authorized deputy issuing the subpoena upon proof of service thereof may certify the facts to the superior court in the county of the board.
- (B) The court shall thereupon issue an order directing the person to appear before the court and show cause why they should not be ordered to comply with the subpoena. The order and a copy of the certified statement shall be served on the person and the court shall have jurisdiction of the matter.
 - (C) The same proceedings shall be had, the same penalties imposed, and the person charged may purge themselves of the contempt in the same way as in a case of a person who has committed a contempt in the trial of a civil action before a superior court.
- (4) A sheriff oversight board may conduct closed sessions, consistent with Section 54957, to review confidential records obtained under this section or otherwise related to its oversight duties, if those sessions comply with applicable confidentiality laws, including, but not limited to, Section 832.7 of the Penal Code.
- (c) (1) A county, through action of the board of supervisors or vote by county residents, may establish an office of the inspector general, appointed by the board of supervisors, to assist the board of supervisors with its duties required pursuant to Section 25303 that relate to the sheriff.
- (2) The inspector general shall have the independent authority to issue a subpoena or subpoena duces tecum subject to the procedure provided in subdivision (b).
 - (3) The inspector general shall have access to the personnel records of peace officers and custodial officers required for the performance of the inspector general's oversight duties. The inspector general shall maintain the confidentiality of these records consistent with Section 832.7 of the Penal Code.
- (d) The exercise of powers under this section or other investigative functions performed by a board of supervisors, sheriff oversight board, or inspector general vested with oversight responsibility for the sheriff shall not be considered to obstruct the investigative functions of the sheriff.

SEC. 2. Section 832.7 of the Penal Code is amended to read:

832.7. (a) Except as provided in subdivision (b), the personnel records of peace officers and custodial officers and records maintained by a state or local agency pursuant to Section 832.5, or information obtained from these

records, are confidential and shall not be disclosed in any criminal or civil proceeding except by discovery pursuant to Sections 1043 and 1046 of the Evidence Code. This section does not apply to investigations or proceedings concerning the conduct of peace officers or custodial officers, or an agency or department that employs those officers, conducted by a grand jury, a district attorney's office, the Attorney General's office, or the Commission on Peace Officer Standards and Training, or a civilian oversight board or commission for a law enforcement agency established pursuant to subdivision (a) of Section 25303.7 of the Government Code or other duly enacted municipal or county ordinance.

(b) (1) Notwithstanding subdivision (a), Section 7923.600 of the Government Code, or any other law, the following peace officer or custodial officer personnel records and records maintained by a state or local agency shall not be confidential and shall be made available for public inspection pursuant to the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1 of the Government Code):

(A) A record relating to the report, investigation, or findings of any of the following:

(i) An incident involving the discharge of a firearm at a person by a peace officer or custodial officer.

(ii) An incident involving the use of force against a person by a peace officer or custodial officer that resulted in death or in great bodily injury.

(iii) A sustained finding involving a complaint that alleges unreasonable or excessive force.

(iv) A sustained finding that an officer failed to intervene against another officer using force that is clearly unreasonable or excessive.

(B) (i) Any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency that a peace officer or custodial officer engaged in sexual assault involving a member of the public.

(ii) As used in this subparagraph, "sexual assault" means 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. For purposes of this definition, the propositioning for or commission of any sexual act while on duty is considered a sexual assault.

(iii) As used in this subparagraph, "member of the public" means any person not employed by the officer's employing agency and includes any participant in a cadet, explorer, or other youth program affiliated with the agency.

(C) Any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency involving dishonesty by a peace officer or custodial officer directly relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by, another peace officer or custodial officer, including, but not limited to, any false statements, filing false reports, destruction, falsifying, or concealing of evidence, or perjury.

(D) Any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency that a peace officer or custodial officer engaged in conduct including, but not limited to, verbal statements, writings, online posts, recordings, and gestures, involving prejudice or discrimination against a person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status.

(E) Any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency that the peace officer made an unlawful arrest or conducted an unlawful search.

(2) Records that are subject to disclosure under clause (iii) or (iv) of subparagraph (A) of paragraph (1), or under subparagraph (D) or (E) of paragraph (1), relating to an incident that occurs before January 1, 2022, shall not be subject to the time limitations in paragraph (11) until January 1, 2023.

(3) Records that shall be released pursuant to this subdivision include 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 or to any person or body charged with determining whether to file criminal charges against an officer in connection with an incident, whether the officer's action was consistent with law and agency policy for purposes of discipline or administrative action, or what discipline to impose or corrective action to take; documents setting forth findings or recommended findings; and copies of disciplinary records relating to the incident, including any letters of intent to impose discipline, any documents reflecting modifications of discipline due to the Skelly or grievance process, and letters indicating final imposition of discipline or other documentation reflecting implementation of corrective action. Records that shall be released pursuant to this subdivision also include records relating to an incident specified in paragraph (1) in which the peace officer or custodial officer resigned before the law enforcement agency or oversight agency concluded its investigation into the alleged incident.

(4) A record from a separate and prior investigation or assessment of a separate incident shall not be released unless it is independently subject to disclosure pursuant to this subdivision.

(5) If an investigation or incident involves multiple officers, information about allegations of misconduct by, or the analysis or disposition of an investigation of, an officer shall not be released pursuant to subparagraph (B), (C), (D), or (E) of paragraph (1), unless it relates to a sustained finding regarding that officer that is itself subject to disclosure pursuant to this section. However, factual information about that action of an officer during an incident, or the statements of an officer about an incident, shall be released if they are relevant to a finding against another officer that is subject to release pursuant to subparagraph (B), (C), (D), or (E) of paragraph (1).

(6) An agency shall redact a record disclosed pursuant to this section only for any of the following purposes:

(A) To remove personal data or information, such as a home address, telephone number, or identities of family members, other than the names and work-related information of peace and custodial officers.

(B) To preserve the anonymity of whistleblowers, complainants, victims, and witnesses.

(C) To protect confidential medical, financial, or other information of which disclosure is specifically prohibited by federal law or would cause an unwarranted invasion of personal privacy that clearly outweighs the strong public interest in records about possible misconduct and use of force by peace officers and custodial officers.

(D) 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 peace officer, custodial officer, or another person.

(7) Notwithstanding paragraph (6), an agency may redact a record disclosed pursuant to this section, including personal identifying information, where, on the facts of the particular case, the public interest served by not disclosing the information clearly outweighs the public interest served by disclosure of the information.

(8) An agency may withhold a record of an incident described in paragraph (1) that is the subject of an active criminal or administrative investigation, in accordance with any of the following:

(A) (i) During an active criminal investigation, disclosure may be delayed for up to 60 days from the date the misconduct or use of force occurred or until the district attorney determines whether to file criminal charges related to the misconduct or use of force, whichever occurs sooner. If an agency delays disclosure pursuant to this clause, the agency shall provide, in writing, the specific basis for the agency's

determination that the interest in delaying disclosure clearly outweighs the public interest in disclosure. This writing shall include the estimated date for disclosure of the withheld information.

(ii) After 60 days from the misconduct or use of force, the agency may continue to delay the disclosure of records or information if the disclosure could reasonably be expected to interfere with a criminal enforcement proceeding against an officer who engaged in misconduct or used the force. If an agency delays disclosure pursuant to this clause, the agency shall, at 180-day intervals as necessary, provide, in writing, the specific basis for the agency's determination that disclosure could reasonably be expected to interfere with a criminal enforcement proceeding. The writing shall include the estimated date for the disclosure of the withheld information. Information withheld by the agency shall be disclosed when the specific basis for withholding is resolved, when the investigation or proceeding is no longer active, or by no later than 18 months after the date of the incident, whichever occurs sooner.

(iii) After 60 days from the misconduct or use of force, the agency may continue to delay the disclosure of records or information if the disclosure could reasonably be expected to interfere with a criminal enforcement proceeding against someone other than the officer who engaged in the misconduct or used the force. If an agency delays disclosure under this clause, the agency shall, at 180-day intervals, provide, in writing, the specific basis why disclosure could reasonably be expected to interfere with a criminal enforcement proceeding, and shall provide an estimated date for the disclosure of the withheld information. Information withheld by the agency shall be disclosed when the specific basis for withholding is resolved, when the investigation or proceeding is no longer active, or by no later than 18 months after the date of the incident, whichever occurs sooner, unless extraordinary circumstances warrant continued delay due to the ongoing criminal investigation or proceeding. In that case, the agency must show by clear and convincing evidence that the interest in preventing prejudice to the active and ongoing criminal investigation or proceeding outweighs the public interest in prompt disclosure of records about misconduct or use of force by peace officers and custodial officers. The agency shall release all information subject to disclosure that does not cause substantial prejudice, including any documents that have otherwise become available.

(iv) In an action to compel disclosure brought pursuant to Section 7923.000 of the Government Code, an agency may justify delay by filing an application to seal the basis for withholding, in accordance with Rule 2.550 of the California Rules of Court, or any successor rule, if disclosure of the written basis itself would impact a privilege or compromise a pending investigation.

(B) If criminal charges are filed related to the incident in which misconduct occurred or force was used, the agency may delay the disclosure of records or information until a verdict on those charges is returned at trial or, if a plea of guilty or no contest is entered, the time to withdraw the plea pursuant to Section 1018.

(C) During an administrative investigation into an incident described in paragraph (1), the agency may delay the disclosure of records or information until the investigating agency determines whether the misconduct or use of force violated a law or agency policy, but no longer than 180 days after the date of the employing agency's discovery of the misconduct or use of force, or allegation of misconduct or use of force, by a person authorized to initiate an investigation.

(9) A record of a complaint, or the investigations, findings, or dispositions of that complaint, shall not be released pursuant to this section if the complaint is frivolous, as defined in Section 128.5 of the Code of Civil Procedure, or if the complaint is unfounded.

(10) The cost of copies of records subject to disclosure pursuant to this subdivision that are made available upon the payment of fees covering direct costs of duplication pursuant to subdivision (a) of Section 7922.530 of the Government Code shall not include the costs of searching for, editing, or redacting the records.

(11) Except to the extent temporary withholding for a longer period is permitted pursuant to paragraph (8), records subject to disclosure under this subdivision shall be provided at the earliest possible time and no later

than 45 days from the date of a request for their disclosure.

(12) (A) For purposes of releasing records pursuant to this subdivision, the lawyer-client privilege does not prohibit the disclosure of either of the following:

(i) Factual information provided by the public entity to its attorney or factual information discovered in any investigation conducted by, or on behalf of, the public entity's attorney.

(ii) Billing records related to the work done by the attorney so long as the records do not relate to active and ongoing litigation and do not disclose information for the purpose of legal consultation between the public entity and its attorney.

(B) This paragraph does not prohibit the public entity from asserting that a record or information within the record is exempted or prohibited from disclosure pursuant to any other federal or state law.

(13) Notwithstanding subdivision (a) or any other law, an agency that formerly employed a peace officer or custodial officer may, without receiving a request for disclosure, disclose to the public the termination for cause of that officer by that agency for any disclosable incident, including those described in subparagraphs (A) to (E), inclusive, of paragraph (1). Any such disclosure shall be at the discretion of the agency and shall not include any information otherwise prohibited from disclosure. This paragraph is declaratory of existing law.

(c) Notwithstanding subdivisions (a) and (b), a department or agency shall release to the complaining party a copy of the complaining party's own statements at the time the complaint is filed.

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

(e) Notwithstanding subdivisions (a) and (b), a department or agency that employs peace or custodial officers may release factual information concerning a disciplinary investigation if the officer who is the subject of the disciplinary investigation, or the officer's agent or representative, publicly makes a statement they know to be false concerning the investigation or the imposition of disciplinary action. Information may not be disclosed by the peace or custodial officer's employer unless the false statement was published by an established medium of communication, such as television, radio, or a newspaper. Disclosure of factual information by the employing agency pursuant to this subdivision is limited to facts contained in the officer's personnel file concerning the disciplinary investigation or imposition of disciplinary action that specifically refute the false statements made public by the peace or custodial officer or their agent or representative.

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

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

(g) This section does not affect the discovery or disclosure of information contained in a peace or custodial officer's personnel file pursuant to Section 1043 of the Evidence Code.

(h) This section does not supersede or affect the criminal discovery process outlined in Chapter 10 (commencing with Section 1054) of Title 6 of Part 2, or the admissibility of personnel records pursuant to subdivision (a), which codifies the court decision in *Pitchess v. Superior Court* (1974) 11 Cal.3d 531.

(i) Nothing in this chapter is intended to limit the public's right of access as provided for in Long Beach Police Officers Association v. City of Long Beach (2014) 59 Cal.4th 59.

SEC. 2.1. Section 832.7 of the Penal Code is amended to read:

832.7. (a) Except as provided in subdivision (b), the personnel records of peace officers and custodial officers and records maintained by a state or local agency pursuant to Section 832.5, or information obtained from these records, are confidential and shall not be disclosed in any criminal or civil proceeding except by discovery pursuant to Sections 1043 and 1046 of the Evidence Code. This section does not apply to investigations or proceedings concerning the conduct of peace officers or custodial officers, or an agency or department that employs those officers, conducted by a grand jury, a district attorney's office, the Attorney General's office, or the Commission on Peace Officer Standards and Training, or a civilian oversight board or commission for a law enforcement agency established pursuant to subdivision (a) of Section 25303.7 of the Government Code or other duly enacted municipal or county ordinance.

(b) (1) Notwithstanding subdivision (a), Section 7923.600 of the Government Code, or any other law, the following peace officer or custodial officer personnel records and records maintained by a state or local agency shall not be confidential and shall be made available for public inspection pursuant to the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1 of the Government Code):

(A) A record relating to the report, investigation, or findings of any of the following:

(i) An incident involving the discharge of a firearm at a person by a peace officer or custodial officer.

(ii) An incident involving the use of force against a person by a peace officer or custodial officer that resulted in death or in great bodily injury.

(iii) A sustained finding involving a complaint that alleges unreasonable or excessive force.

(iv) A sustained finding that an officer failed to intervene against another officer using force that is clearly unreasonable or excessive.

(B) (i) Any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency that a peace officer or custodial officer engaged in sexual assault involving a member of the public.

(ii) As used in this subparagraph, "sexual assault" means 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. For purposes of this definition, the propositioning for or commission of any sexual act while on duty is considered a sexual assault.

(iii) As used in this subparagraph, "member of the public" means any person not employed by the officer's employing agency and includes any participant in a cadet, explorer, or other youth program affiliated with the agency.

(C) Any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency involving dishonesty by a peace officer or custodial officer directly relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by, another peace officer or custodial officer, including, but not limited to, any false statements, filing false reports, destruction, falsifying, or concealing of evidence, or perjury.

(D) Any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency that a peace officer or custodial officer engaged in conduct, including, but not limited to, verbal statements, writings, online posts, recordings, and gestures, involving prejudice or discrimination against a person on the basis of race, religious creed, color, national origin, ancestry,

physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status.

(E) Any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency that the peace officer made an unlawful arrest or conducted an unlawful search.

(2) Records that are subject to disclosure under clause (iii) or (iv) of subparagraph (A) of paragraph (1), or under subparagraph (D) or (E) of paragraph (1), relating to an incident that occurs before January 1, 2022, shall not be subject to the time limitations in paragraph (11) until January 1, 2023.

(3) Records that shall be released pursuant to this subdivision include 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 or to any person or body charged with determining whether to file criminal charges against an officer in connection with an incident, whether the officer's action was consistent with law and agency policy for purposes of discipline or administrative action, or what discipline to impose or corrective action to take; documents setting forth findings or recommended findings; and copies of disciplinary records relating to the incident, including any letters of intent to impose discipline, any documents reflecting modifications of discipline due to the Skelly or grievance process, and letters indicating final imposition of discipline or other documentation reflecting implementation of corrective action. Records that shall be released pursuant to this subdivision also include records relating to an incident specified in paragraph (1) in which the peace officer or custodial officer resigned before the law enforcement agency or oversight agency concluded its investigation into the alleged incident.

(4) A record from a separate and prior investigation or assessment of a separate incident shall not be released unless it is independently subject to disclosure pursuant to this subdivision.

(5) If an investigation or incident involves multiple officers, information about allegations of misconduct by, or the analysis or disposition of an investigation of, an officer shall not be released pursuant to subparagraph (B), (C), (D), or (E) of paragraph (1), unless it relates to a sustained finding regarding that officer that is itself subject to disclosure pursuant to this section. However, factual information about that action of an officer during an incident, or the statements of an officer about an incident, shall be released if they are relevant to a finding against another officer that is subject to release pursuant to subparagraph (B), (C), (D), or (E) of paragraph (1).

(6) An agency shall redact a record disclosed pursuant to this section only for any of the following purposes:

(A) To remove personal data or information, such as a home address, telephone number, or identities of family members, other than the names and work-related information of peace and custodial officers.

(B) To preserve the anonymity of whistleblowers, complainants, victims, and witnesses.

(C) To protect confidential medical, financial, or other information of which disclosure is specifically prohibited by federal law or would cause an unwarranted invasion of personal privacy that clearly outweighs the strong public interest in records about possible misconduct and use of force by peace officers and custodial officers.

(D) (i) 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 peace officer, custodial officer, or another person.

(ii) In an action to compel disclosure brought pursuant to Section 7923.000 of the Government Code, in determining whether a redaction made pursuant to clause (i) is appropriate, a court shall consider whether a particular peace officer is currently operating undercover and their duties demand anonymity.

(7) Notwithstanding paragraph (6), an agency may redact a record disclosed pursuant to this section, including personal identifying information, where, on the facts of the particular case, the public interest served by not disclosing the information clearly outweighs the public interest served by disclosure of the information.

(8) An agency may withhold a record of an incident described in paragraph (1) that is the subject of an active criminal or administrative investigation, in accordance with any of the following:

(A) (i) During an active criminal investigation, disclosure may be delayed for up to 60 days from the date the misconduct or use of force occurred or until the district attorney determines whether to file criminal charges related to the misconduct or use of force, whichever occurs sooner. If an agency delays disclosure pursuant to this clause, the agency shall provide, in writing, the specific basis for the agency's determination that the interest in delaying disclosure clearly outweighs the public interest in disclosure. This writing shall include the estimated date for disclosure of the withheld information.

(ii) After 60 days from the misconduct or use of force, the agency may continue to delay the disclosure of records or information if the disclosure could reasonably be expected to interfere with a criminal enforcement proceeding against an officer who engaged in misconduct or used force. If an agency delays disclosure pursuant to this clause, the agency shall, at 180-day intervals as necessary, provide, in writing, the specific basis for the agency's determination that disclosure could reasonably be expected to interfere with a criminal enforcement proceeding. The writing shall include the estimated date for the disclosure of the withheld information. Information withheld by the agency shall be disclosed when the specific basis for withholding is resolved, when the investigation or proceeding is no longer active, or by no later than 18 months after the date of the incident, whichever occurs sooner.

(iii) After 60 days from the misconduct or use of force, the agency may continue to delay the disclosure of records or information if the disclosure could reasonably be expected to interfere with a criminal enforcement proceeding against someone other than the officer who engaged in the misconduct or used force. If an agency delays disclosure under this clause, the agency shall, at 180-day intervals, provide, in writing, the specific basis why disclosure could reasonably be expected to interfere with a criminal enforcement proceeding, and shall provide an estimated date for the disclosure of the withheld information. Information withheld by the agency shall be disclosed when the specific basis for withholding is resolved, when the investigation or proceeding is no longer active, or by no later than 18 months after the date of the incident, whichever occurs sooner, unless extraordinary circumstances warrant continued delay due to the ongoing criminal investigation or proceeding. In that case, the agency must show by clear and convincing evidence that the interest in preventing prejudice to the active and ongoing criminal investigation or proceeding outweighs the public interest in prompt disclosure of records about misconduct or use of force by peace officers and custodial officers. The agency shall release all information subject to disclosure that does not cause substantial prejudice, including any documents that have otherwise become available.

(iv) In an action to compel disclosure brought pursuant to Section 7923.000 of the Government Code, an agency may justify delay by filing an application to seal the basis for withholding, in accordance with Rule 2.550 of the California Rules of Court, or any successor rule, if disclosure of the written basis itself would impact a privilege or compromise a pending investigation.

(B) If criminal charges are filed related to the incident in which misconduct occurred or force was used, the agency may delay the disclosure of records or information until a verdict on those charges is returned at trial or, if a plea of guilty or no contest is entered, the time to withdraw the plea pursuant to Section 1018.

(C) During an administrative investigation into an incident described in paragraph (1), the agency may delay the disclosure of records or information until the investigating agency determines whether the misconduct or use of force violated a law or agency policy, but no longer than 180 days after the date of the employing agency's discovery of the misconduct or use of force, or allegation of misconduct or use of force, by a person authorized to initiate an investigation.

- (9) A record of a complaint, or the investigations, findings, or dispositions of that complaint, shall not be released pursuant to this section if the complaint is frivolous, as defined in Section 128.5 of the Code of Civil Procedure, or if the complaint is unfounded.
- (10) The cost of copies of records subject to disclosure pursuant to this subdivision that are made available upon the payment of fees covering direct costs of duplication pursuant to subdivision (a) of Section 7922.530 of the Government Code shall not include the costs of searching for, editing, or redacting the records.
- (11) Except to the extent temporary withholding for a longer period is permitted pursuant to paragraph (8), records subject to disclosure under this subdivision shall be provided at the earliest possible time and no later than 45 days from the date of a request for their disclosure.
- (12) (A) For purposes of releasing records pursuant to this subdivision, the lawyer-client privilege does not prohibit the disclosure of either of the following:
- (i) Factual information provided by the public entity to its attorney or factual information discovered in any investigation conducted by, or on behalf of, the public entity's attorney.
 - (ii) Billing records related to the work done by the attorney so long as the records do not relate to active and ongoing litigation and do not disclose information for the purpose of legal consultation between the public entity and its attorney.
- (B) This paragraph does not prohibit the public entity from asserting that a record or information within the record is exempted or prohibited from disclosure pursuant to any other federal or state law.
- (13) Notwithstanding subdivision (a) or any other law, an agency that formerly employed a peace officer or custodial officer may, without receiving a request for disclosure, disclose to the public the termination for cause of that officer by that agency for any disclosable incident, including those described in subparagraphs (A) to (E), inclusive, of paragraph (1). Any such disclosure shall be at the discretion of the agency and shall not include any information otherwise prohibited from disclosure. This paragraph is declaratory of existing law.
- (c) Notwithstanding subdivisions (a) and (b), a department or agency shall release to the complaining party a copy of the complaining party's own statements at the time the complaint is filed.
- (d) Notwithstanding subdivisions (a) and (b), a department or agency that employs peace or custodial officers may disseminate data regarding the number, type, or disposition of complaints (sustained, not sustained, exonerated, or unfounded) made against its officers if that information is in a form that does not identify the individuals involved.
- (e) Notwithstanding subdivisions (a) and (b), a department or agency that employs peace or custodial officers may release factual information concerning a disciplinary investigation if the officer who is the subject of the disciplinary investigation, or the officer's agent or representative, publicly makes a statement they know to be false concerning the investigation or the imposition of disciplinary action. Information may not be disclosed by the peace or custodial officer's employer unless the false statement was published by an established medium of communication, such as television, radio, or a newspaper. Disclosure of factual information by the employing agency pursuant to this subdivision is limited to facts contained in the officer's personnel file concerning the disciplinary investigation or imposition of disciplinary action that specifically refute the false statements made public by the peace or custodial officer or their agent or representative.
- (f) (1) The department or agency shall provide written notification to the complaining party of the disposition of the complaint within 30 days of the disposition.
- (2) The notification described in this subdivision is not conclusive or binding or admissible as evidence in any separate or subsequent action or proceeding brought before an arbitrator, court, or judge of this state or the

United States.

(g) This section does not affect the discovery or disclosure of information contained in a peace or custodial officer's personnel file pursuant to Section 1043 of the Evidence Code.

(h) This section does not supersede or affect the criminal discovery process outlined in Chapter 10 (commencing with Section 1054) of Title 6 of Part 2, or the admissibility of personnel records pursuant to subdivision (a), which codifies the court decision in *Pitchess v. Superior Court* (1974) 11 Cal.3d 531.

(i) Nothing in this chapter is intended to limit the public's right of access as provided for in *Long Beach Police Officers Association v. City of Long Beach* (2014) 59 Cal.4th 59.

SEC. 2.2. Section 832.7 of the Penal Code is amended to read:

832.7. (a) Except as provided in subdivision (b), the personnel records of peace officers and custodial officers and records maintained by a state or local agency pursuant to Section 832.5, or information obtained from these records, are confidential and shall not be disclosed in any criminal or civil proceeding except by discovery pursuant to Sections 1043 and 1046 of the Evidence Code. This section does not apply to investigations or proceedings concerning the conduct of peace officers or custodial officers, or an agency or department that employs those officers, conducted by a grand jury, a district attorney's office, the Attorney General's office, or the Commission on Peace Officer Standards and Training, or a civilian oversight board or commission for a law enforcement agency established pursuant to subdivision (a) of Section 25303.7 of the Government Code or other duly enacted municipal or county ordinance.

(b) (1) Notwithstanding subdivision (a), Section 7923.600 of the Government Code, or any other law, the following peace officer or custodial officer personnel records and records maintained by a state or local agency shall not be confidential and shall be made available for public inspection pursuant to the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1 of the Government Code):

(A) A record relating to the report, investigation, or findings of any of the following:

(i) An incident involving the discharge of a firearm at a person by a peace officer or custodial officer.

(ii) An incident involving the use of force against a person by a peace officer or custodial officer that resulted in death or in great bodily injury.

(iii) A sustained finding involving a complaint that alleges unreasonable or excessive force.

(iv) A sustained finding that an officer failed to intervene against another officer using force that is clearly unreasonable or excessive.

(B) (i) Any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency that a peace officer or custodial officer engaged in sexual assault involving a member of the public.

(ii) As used in this subparagraph, "sexual assault" means 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. For purposes of this definition, the propositioning for or commission of any sexual act while on duty is considered a sexual assault.

(iii) As used in this subparagraph, "member of the public" means any person not employed by the officer's employing agency and includes any participant in a cadet, explorer, or other youth program affiliated with the agency.

(C) Any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency involving dishonesty by a peace officer or custodial officer directly relating to

the reporting, investigation, or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by, another peace officer or custodial officer, including, but not limited to, any false statements, filing false reports, destruction, falsifying, or concealing of evidence, or perjury.

(D) Any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency that a peace officer or custodial officer engaged in conduct, including, but not limited to, verbal statements, writings, online posts, recordings, and gestures, involving prejudice or discrimination against a person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status.

(E) Any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency that the peace officer made an unlawful arrest or conducted an unlawful search.

(F) An agreement prohibited by subdivision (e) of Section 13510.9.

(2) Records that are subject to disclosure under clause (iii) or (iv) of subparagraph (A) of paragraph (1), or under subparagraph (D) or (E) of paragraph (1), relating to an incident that occurs before January 1, 2022, shall not be subject to the time limitations in paragraph (11) until January 1, 2023.

(3) Records that shall be released pursuant to this subdivision include 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 or to any person or body charged with determining whether to file criminal charges against an officer in connection with an incident, whether the officer's action was consistent with law and agency policy for purposes of discipline or administrative action, or what discipline to impose or corrective action to take; documents setting forth findings or recommended findings; and copies of disciplinary records relating to the incident, including any letters of intent to impose discipline, any documents reflecting modifications of discipline due to the Skelly or grievance process, and letters indicating final imposition of discipline or other documentation reflecting implementation of corrective action. Records that shall be released pursuant to this subdivision also include records relating to an incident specified in paragraph (1) in which the peace officer or custodial officer resigned before the law enforcement agency or oversight agency concluded its investigation into the alleged incident.

(4) A record from a separate and prior investigation or assessment of a separate incident shall not be released unless it is independently subject to disclosure pursuant to this subdivision.

(5) If an investigation or incident involves multiple officers, information about allegations of misconduct by, or the analysis or disposition of an investigation of, an officer shall not be released pursuant to subparagraph (B), (C), (D), or (E) of paragraph (1), unless it relates to a sustained finding regarding that officer that is itself subject to disclosure pursuant to this section. However, factual information about that action of an officer during an incident, or the statements of an officer about an incident, shall be released if they are relevant to a finding against another officer that is subject to release pursuant to subparagraph (B), (C), (D), or (E) of paragraph (1).

(6) An agency shall redact a record disclosed pursuant to this section only for any of the following purposes:

(A) To remove personal data or information, such as a home address, telephone number, or identities of family members, other than the names and work-related information of peace and custodial officers.

(B) To preserve the anonymity of whistleblowers, complainants, victims, and witnesses.

(C) To protect confidential medical, financial, or other information of which disclosure is specifically prohibited by federal law or would cause an unwarranted invasion of personal privacy that clearly

outweighs the strong public interest in records about possible misconduct and use of force by peace officers and custodial officers.

(D) 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 peace officer, custodial officer, or another person.

(7) Notwithstanding paragraph (6), an agency may redact a record disclosed pursuant to this section, including personal identifying information, where, on the facts of the particular case, the public interest served by not disclosing the information clearly outweighs the public interest served by disclosure of the information.

(8) An agency may withhold a record of an incident described in paragraph (1) that is the subject of an active criminal or administrative investigation, in accordance with any of the following:

(A) (i) During an active criminal investigation, disclosure may be delayed for up to 60 days from the date the misconduct or use of force occurred or until the district attorney determines whether to file criminal charges related to the misconduct or use of force, whichever occurs sooner. If an agency delays disclosure pursuant to this clause, the agency shall provide, in writing, the specific basis for the agency's determination that the interest in delaying disclosure clearly outweighs the public interest in disclosure. This writing shall include the estimated date for disclosure of the withheld information.

(ii) After 60 days from the misconduct or use of force, the agency may continue to delay the disclosure of records or information if the disclosure could reasonably be expected to interfere with a criminal enforcement proceeding against an officer who engaged in misconduct or use of force. If an agency delays disclosure pursuant to this clause, the agency shall, at 180-day intervals as necessary, provide, in writing, the specific basis for the agency's determination that disclosure could reasonably be expected to interfere with a criminal enforcement proceeding. The writing shall include the estimated date for the disclosure of the withheld information. Information withheld by the agency shall be disclosed when the specific basis for withholding is resolved, when the investigation or proceeding is no longer active, or by no later than 18 months after the date of the incident, whichever occurs sooner.

(iii) After 60 days from the misconduct or use of force, the agency may continue to delay the disclosure of records or information if the disclosure could reasonably be expected to interfere with a criminal enforcement proceeding against someone other than the officer who engaged in the misconduct or use of force. If an agency delays disclosure under this clause, the agency shall, at 180-day intervals, provide, in writing, the specific basis why disclosure could reasonably be expected to interfere with a criminal enforcement proceeding, and shall provide an estimated date for the disclosure of the withheld information. Information withheld by the agency shall be disclosed when the specific basis for withholding is resolved, when the investigation or proceeding is no longer active, or by no later than 18 months after the date of the incident, whichever occurs sooner, unless extraordinary circumstances warrant continued delay due to the ongoing criminal investigation or proceeding. In that case, the agency must show by clear and convincing evidence that the interest in preventing prejudice to the active and ongoing criminal investigation or proceeding outweighs the public interest in prompt disclosure of records about misconduct or use of force by peace officers and custodial officers. The agency shall release all information subject to disclosure that does not cause substantial prejudice, including any documents that have otherwise become available.

(iv) In an action to compel disclosure brought pursuant to Section 7923.000 of the Government Code, an agency may justify delay by filing an application to seal the basis for withholding, in accordance with Rule 2.550 of the California Rules of Court, or any successor rule, if disclosure of the written basis itself would impact a privilege or compromise a pending investigation.

(B) If criminal charges are filed related to the incident in which misconduct occurred or force was used, the agency may delay the disclosure of records or information until a verdict on those charges is returned

at trial or, if a plea of guilty or no contest is entered, the time to withdraw the plea pursuant to Section 1018.

(C) During an administrative investigation into an incident described in paragraph (1), the agency may delay the disclosure of records or information until the investigating agency determines whether the misconduct or use of force violated a law or agency policy, but no longer than 180 days after the date of the employing agency's discovery of the misconduct or use of force, or allegation of misconduct or use of force, by a person authorized to initiate an investigation.

(9) A record of a complaint, or the investigations, findings, or dispositions of that complaint, shall not be released pursuant to this section if the complaint is frivolous, as defined in Section 128.5 of the Code of Civil Procedure, or if the complaint is unfounded.

(10) The cost of copies of records subject to disclosure pursuant to this subdivision that are made available upon the payment of fees covering direct costs of duplication pursuant to subdivision (a) of Section 7922.530 of the Government Code shall not include the costs of searching for, editing, or redacting the records.

(11) Except to the extent temporary withholding for a longer period is permitted pursuant to paragraph (8), records subject to disclosure under this subdivision shall be provided at the earliest possible time and no later than 45 days from the date of a request for their disclosure.

(12) (A) For purposes of releasing records pursuant to this subdivision, the lawyer-client privilege does not prohibit the disclosure of either of the following:

(i) Factual information provided by the public entity to its attorney or factual information discovered in any investigation conducted by, or on behalf of, the public entity's attorney.

(ii) Billing records related to the work done by the attorney so long as the records do not relate to active and ongoing litigation and do not disclose information for the purpose of legal consultation between the public entity and its attorney.

(B) This paragraph does not prohibit the public entity from asserting that a record or information within the record is exempted or prohibited from disclosure pursuant to any other federal or state law.

(13) Notwithstanding subdivision (a) or any other law, an agency that formerly employed a peace officer or custodial officer may, without receiving a request for disclosure, disclose to the public the termination for cause of that officer by that agency for any disclosable incident, including those described in subparagraphs (A) to (E), inclusive, of paragraph (1). Any such disclosure shall be at the discretion of the agency and shall not include any information otherwise prohibited from disclosure. This paragraph is declaratory of existing law.

(c) Notwithstanding subdivisions (a) and (b), a department or agency shall release to the complaining party a copy of the complaining party's own statements at the time the complaint is filed.

(d) Notwithstanding subdivisions (a) and (b), a department or agency that employs peace or custodial officers may disseminate data regarding the number, type, or disposition of complaints (sustained, not sustained, exonerated, or unfounded) made against its officers if that information is in a form that does not identify the individuals involved.

(e) Notwithstanding subdivisions (a) and (b), a department or agency that employs peace or custodial officers may release factual information concerning a disciplinary investigation if the officer who is the subject of the disciplinary investigation, or the officer's agent or representative, publicly makes a statement they know to be false concerning the investigation or the imposition of disciplinary action. Information may not be disclosed by the peace or custodial officer's employer unless the false statement was published by an established medium of communication, such as television, radio, or a newspaper. Disclosure of factual information by the employing

agency pursuant to this subdivision is limited to facts contained in the officer's personnel file concerning the disciplinary investigation or imposition of disciplinary action that specifically refute the false statements made public by the peace or custodial officer or their agent or representative.

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

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

(g) This section does not affect the discovery or disclosure of information contained in a peace or custodial officer's personnel file pursuant to Section 1043 of the Evidence Code.

(h) This section does not supersede or affect the criminal discovery process outlined in Chapter 10 (commencing with Section 1054) of Title 6 of Part 2, or the admissibility of personnel records pursuant to subdivision (a), which codifies the court decision in *Pitchess v. Superior Court* (1974) 11 Cal.3d 531.

(i) Nothing in this chapter is intended to limit the public's right of access as provided for in *Long Beach Police Officers Association v. City of Long Beach* (2014) 59 Cal.4th 59.

SEC. 2.3. Section 832.7 of the Penal Code is amended to read:

832.7. (a) Except as provided in subdivision (b), the personnel records of peace officers and custodial officers and records maintained by a state or local agency pursuant to Section 832.5, or information obtained from these records, are confidential and shall not be disclosed in any criminal or civil proceeding except by discovery pursuant to Sections 1043 and 1046 of the Evidence Code. This section does not apply to investigations or proceedings concerning the conduct of peace officers or custodial officers, or an agency or department that employs those officers, conducted by a grand jury, a district attorney's office, the Attorney General's office, or the Commission on Peace Officer Standards and Training, or a civilian oversight board or commission for a law enforcement agency established pursuant to subdivision (a) of Section 25303.7 of the Government Code or other duly enacted municipal or county ordinance.

(b) (1) Notwithstanding subdivision (a), Section 7923.600 of the Government Code, or any other law, the following peace officer or custodial officer personnel records and records maintained by a state or local agency shall not be confidential and shall be made available for public inspection pursuant to the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1 of the Government Code):

(A) A record relating to the report, investigation, or findings of any of the following:

- (i) An incident involving the discharge of a firearm at a person by a peace officer or custodial officer.
- (ii) An incident involving the use of force against a person by a peace officer or custodial officer that resulted in death or in great bodily injury.
- (iii) A sustained finding involving a complaint that alleges unreasonable or excessive force.
- (iv) A sustained finding that an officer failed to intervene against another officer using force that is clearly unreasonable or excessive.

(B) (i) Any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency that a peace officer or custodial officer engaged in sexual assault involving a member of the public.

- (ii) As used in this subparagraph, "sexual assault" means 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. For purposes of this definition, the propositioning for or commission of any sexual act while on duty is considered a sexual assault.

(iii) As used in this subparagraph, “member of the public” means any person not employed by the officer’s employing agency and includes any participant in a cadet, explorer, or other youth program affiliated with the agency.

(C) Any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency involving dishonesty by a peace officer or custodial officer directly relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by, another peace officer or custodial officer, including, but not limited to, any false statements, filing false reports, destruction, falsifying, or concealing of evidence, or perjury.

(D) Any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency that a peace officer or custodial officer engaged in conduct, including, but not limited to, verbal statements, writings, online posts, recordings, and gestures, involving prejudice or discrimination against a person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status.

(E) Any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency that the peace officer made an unlawful arrest or conducted an unlawful search.

(F) An agreement prohibited by subdivision (e) of Section 13510.9.

(2) Records that are subject to disclosure under clause (iii) or (iv) of subparagraph (A) of paragraph (1), or under subparagraph (D) or (E) of paragraph (1), relating to an incident that occurs before January 1, 2022, shall not be subject to the time limitations in paragraph (1) until January 1, 2023.

(3) Records that shall be released pursuant to this subdivision include 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 or to any person or body charged with determining whether to file criminal charges against an officer in connection with an incident, whether the officer’s action was consistent with law and agency policy for purposes of discipline or administrative action, or what discipline to impose or corrective action to take; documents setting forth findings or recommended findings; and copies of disciplinary records relating to the incident, including any letters of intent to impose discipline, any documents reflecting modifications of discipline due to the Skelly or grievance process, and letters indicating final imposition of discipline or other documentation reflecting implementation of corrective action. Records that shall be released pursuant to this subdivision also include records relating to an incident specified in paragraph (1) in which the peace officer or custodial officer resigned before the law enforcement agency or oversight agency concluded its investigation into the alleged incident.

(4) A record from a separate and prior investigation or assessment of a separate incident shall not be released unless it is independently subject to disclosure pursuant to this subdivision.

(5) If an investigation or incident involves multiple officers, information about allegations of misconduct by, or the analysis or disposition of an investigation of, an officer shall not be released pursuant to subparagraph (B), (C), (D), or (E) of paragraph (1), unless it relates to a sustained finding regarding that officer that is itself subject to disclosure pursuant to this section. However, factual information about that action of an officer during an incident, or the statements of an officer about an incident, shall be released if they are relevant to a finding against another officer that is subject to release pursuant to subparagraph (B), (C), (D), or (E) of paragraph (1).

(6) An agency shall redact a record disclosed pursuant to this section only for any of the following purposes:

(A) To remove personal data or information, such as a home address, telephone number, or identities of family members, other than the names and work-related information of peace and custodial officers.

(B) To preserve the anonymity of whistleblowers, complainants, victims, and witnesses.

(C) To protect confidential medical, financial, or other information of which disclosure is specifically prohibited by federal law or would cause an unwarranted invasion of personal privacy that clearly outweighs the strong public interest in records about possible misconduct and use of force by peace officers and custodial officers.

(D) (i) 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 peace officer, custodial officer, or another person.

(ii) In an action to compel disclosure brought pursuant to Section 7923.000 of the Government Code, in determining whether a redaction made pursuant to clause (i) is appropriate, a court shall consider whether a particular peace officer is currently operating undercover and their duties demand anonymity.

(7) Notwithstanding paragraph (6), an agency may redact a record disclosed pursuant to this section, including personal identifying information, where, on the facts of the particular case, the public interest served by not disclosing the information clearly outweighs the public interest served by disclosure of the information.

(8) An agency may withhold a record of an incident described in paragraph (1) that is the subject of an active criminal or administrative investigation, in accordance with any of the following:

(A) (i) During an active criminal investigation, disclosure may be delayed for up to 60 days from the date the misconduct or use of force occurred or until the district attorney determines whether to file criminal charges related to the misconduct or use of force, whichever occurs sooner. If an agency delays disclosure pursuant to this clause, the agency shall provide, in writing, the specific basis for the agency's determination that the interest in delaying disclosure clearly outweighs the public interest in disclosure. This writing shall include the estimated date for disclosure of the withheld information.

(ii) After 60 days from the misconduct or use of force, the agency may continue to delay the disclosure of records or information if the disclosure could reasonably be expected to interfere with a criminal enforcement proceeding against an officer who engaged in misconduct or use of force. If an agency delays disclosure pursuant to this clause, the agency shall, at 180-day intervals as necessary, provide, in writing, the specific basis for the agency's determination that disclosure could reasonably be expected to interfere with a criminal enforcement proceeding. The writing shall include the estimated date for the disclosure of the withheld information. Information withheld by the agency shall be disclosed when the specific basis for withholding is resolved, when the investigation or proceeding is no longer active, or by no later than 18 months after the date of the incident, whichever occurs sooner.

(iii) After 60 days from the misconduct or use of force, the agency may continue to delay the disclosure of records or information if the disclosure could reasonably be expected to interfere with a criminal enforcement proceeding against someone other than the officer who engaged in the misconduct or use of force. If an agency delays disclosure under this clause, the agency shall, at 180-day intervals, provide, in writing, the specific basis why disclosure could reasonably be expected to interfere with a criminal enforcement proceeding, and shall provide an estimated date for the disclosure of the withheld information. Information withheld by the agency shall be disclosed when the specific basis for withholding is resolved, when the investigation or proceeding is no longer active, or by no later than 18 months after the date of the incident, whichever occurs sooner, unless extraordinary circumstances warrant continued delay due to the ongoing criminal investigation or proceeding. In that case, the agency must show by clear and convincing evidence that the interest in preventing prejudice to the active and ongoing criminal investigation or proceeding outweighs the

public interest in prompt disclosure of records about misconduct or use of force by peace officers and custodial officers. The agency shall release all information subject to disclosure that does not cause substantial prejudice, including any documents that have otherwise become available.

(iv) In an action to compel disclosure brought pursuant to Section 7923.000 of the Government Code, an agency may justify delay by filing an application to seal the basis for withholding, in accordance with Rule 2.550 of the California Rules of Court, or any successor rule, if disclosure of the written basis itself would impact a privilege or compromise a pending investigation.

(B) If criminal charges are filed related to the incident in which misconduct occurred or force was used, the agency may delay the disclosure of records or information until a verdict on those charges is returned at trial or, if a plea of guilty or no contest is entered, the time to withdraw the plea pursuant to Section 1018.

(C) During an administrative investigation into an incident described in paragraph (1), the agency may delay the disclosure of records or information until the investigating agency determines whether the misconduct or use of force violated a law or agency policy, but no longer than 180 days after the date of the employing agency's discovery of the misconduct or use of force, or allegation of misconduct or use of force, by a person authorized to initiate an investigation.

(9) A record of a complaint, or the investigations, findings, or dispositions of that complaint, shall not be released pursuant to this section if the complaint is frivolous, as defined in Section 128.5 of the Code of Civil Procedure, or if the complaint is unfounded.

(10) The cost of copies of records subject to disclosure pursuant to this subdivision that are made available upon the payment of fees covering direct costs of duplication pursuant to subdivision (a) of Section 7922.530 of the Government Code shall not include the costs of searching for, editing, or redacting the records.

(11) Except to the extent temporary withholding for a longer period is permitted pursuant to paragraph (8), records subject to disclosure under this subdivision shall be provided at the earliest possible time and no later than 45 days from the date of a request for their disclosure.

(12) (A) For purposes of releasing records pursuant to this subdivision, the lawyer-client privilege does not prohibit the disclosure of either of the following:

(i) Factual information provided by the public entity to its attorney or factual information discovered in any investigation conducted by, or on behalf of, the public entity's attorney.

(ii) Billing records related to the work done by the attorney so long as the records do not relate to active and ongoing litigation and do not disclose information for the purpose of legal consultation between the public entity and its attorney.

(B) This paragraph does not prohibit the public entity from asserting that a record or information within the record is exempted or prohibited from disclosure pursuant to any other federal or state law.

(13) Notwithstanding subdivision (a) or any other law, an agency that formerly employed a peace officer or custodial officer may, without receiving a request for disclosure, disclose to the public the termination for cause of that officer by that agency for any disclosable incident, including those described in subparagraphs (A) to (E), inclusive, of paragraph (1). Any such disclosure shall be at the discretion of the agency and shall not include any information otherwise prohibited from disclosure. This paragraph is declaratory of existing law.

(c) Notwithstanding subdivisions (a) and (b), a department or agency shall release to the complaining party a copy of the complaining party's own statements at the time the complaint is filed.

(d) Notwithstanding subdivisions (a) and (b), a department or agency that employs peace or custodial officers may disseminate data regarding the number, type, or disposition of complaints (sustained, not sustained, exonerated, or unfounded) made against its officers if that information is in a form that does not identify the individuals involved.

(e) Notwithstanding subdivisions (a) and (b), a department or agency that employs peace or custodial officers may release factual information concerning a disciplinary investigation if the officer who is the subject of the disciplinary investigation, or the officer's agent or representative, publicly makes a statement they know to be false concerning the investigation or the imposition of disciplinary action. Information may not be disclosed by the peace or custodial officer's employer unless the false statement was published by an established medium of communication, such as television, radio, or a newspaper. Disclosure of factual information by the employing agency pursuant to this subdivision is limited to facts contained in the officer's personnel file concerning the disciplinary investigation or imposition of disciplinary action that specifically refute the false statements made public by the peace or custodial officer or their agent or representative.

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

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

(g) This section does not affect the discovery or disclosure of information contained in a peace or custodial officer's personnel file pursuant to Section 1043 of the Evidence Code.

(h) This section does not supersede or affect the criminal discovery process outlined in Chapter 10 (commencing with Section 1054) of Title 6 of Part 2, or the admissibility of personnel records pursuant to subdivision (a), which codifies the court decision in *Pitchess v. Superior Court* (1974) 11 Cal.3d 531.

(i) Nothing in this chapter is intended to limit the public's right of access as provided for in *Long Beach Police Officers Association v. City of Long Beach* (2014) 59 Cal.4th 59.

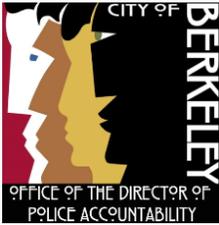
SEC. 3. (a) Section 2.1 of this bill incorporates amendments to Section 832.7 of the Penal Code proposed by both this bill and Assembly Bill 1178. That section of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2026, (2) each bill amends Section 832.7 of the Penal Code, (3) Assembly Bill 1388 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after Assembly Bill 1178, in which case Sections 2, 2.2, and 2.3 of this bill shall not become operative.

(b) Section 2.2 of this bill incorporates amendments to Section 832.7 of the Penal Code proposed by both this bill and Assembly Bill 1388. That section of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2026, (2) each bill amends Section 832.7 of the Penal Code, (3) Assembly Bill 1178 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after Assembly Bill 1388 in which case Sections 2, 2.1, and 2.3 of this bill shall not become operative.

(c) Section 2.3 of this bill incorporates amendments to Section 832.7 of the Penal Code proposed by this bill, Assembly Bill 1178, and Assembly Bill 1388. That section of this bill shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2026, (2) all three bills amend Section 832.7 of the Penal Code, and (3) this bill is enacted after Assembly Bill 1178 and Assembly Bill 1388, in which case Sections 2, 2.1, and 2.2 of this bill shall not become operative.

Item 9.b.

ODPA Memorandum Titled “2025 ODPA Review of BPD Policy 300 and Recommendations for the PAB’s Annual Convening”



MEMORANDUM

Date: November 26, 2025
 To: Honorable Members of the Police Accountability Board (PAB)
 From: Hansel A. Aguilar, Director of Police Accountability (DPA) *HAA*
 Jose Murillo, ODPa Policy Analyst *JM*
 Dan Weinberg, ODPa Investigator *DW*
 Subject: 2025 ODPa Review of BPD Policy 300 and Recommendations for the PAB's Annual Convening

I. PURPOSE AND BACKGROUND

Pursuant to Berkeley Police Department (BPD) Policy 300.13¹'s requirement for the BPD and the PAB to convene to review and update the Use of Force Policy (at least annually), this brief memorandum is prepared to assist the PAB in its contemplated annual convening. Specifically, this review supplements the ODPa's 2024 Policy Review Report on BPD Policy 300 (Use of Force),² which first introduced the doctrine of *officer-created jeopardy* and recommended that the BPD and PAB incorporate this concept into policy, training, and after-action review.

Since that report, the legal and professional landscape around officer-created jeopardy has evolved in ways that reinforce ODPa's prior recommendations and support formal codification of this doctrine.

II. EVOLVING LEGAL AND PROFESSIONAL CONTEXT

1. Barnes v. Felix (2025) and Officer-Created Jeopardy

In *Barnes v. Felix*, 605 U.S. ___, 145 S. Ct. 1353 (2025),³ the U.S. Supreme Court unanimously rejected the Fifth Circuit's "*moment of threat*" doctrine and reaffirmed that the Fourth Amendment reasonableness inquiry must consider the totality of the circumstances—with no temporal limit on relevant facts.⁴ The case squarely raised whether courts may consider pre-seizure officer conduct that contributes to the need to use deadly force, conduct that Professor Cynthia Lee and others describe as "officer-created jeopardy."⁵

¹ 300.13 POLICY REVIEW AND UPDATES

This policy shall be regularly reviewed and updated to reflect developing practices and procedures. At least annually, the Berkeley Police Department and the PAB shall convene to review and update the Use of Force Policy to reflect developing practices and procedures per SB 230

https://berkeleyca.gov/sites/default/files/2022-05/Use_of_Force.pdf

² Office of the Director of Police Accountability, Policy Review Report: BPD Policy 300 – Use of Force & Policy 428 – First Amendment Assemblies (2024) (hereinafter "2024 ODPa Policy Review Report"):

<https://berkeleyca.gov/sites/default/files/documents/2024-PR-0001%20Policy%20Review%20Report.pdf>

³ *Barnes v. Felix*, 605 U.S. ___, 145 S. Ct. 1353 (2025)

https://www.supremecourt.gov/opinions/24pdf/23-1239_onjq.pdf

⁴ *ibid*

⁵ See Cynthia Lee, *Officer-Created Jeopardy: Broadening the Time Frame for Assessing a Police Officer's Use of Deadly Force*, 89 Geo. Wash. L. Rev. 1362 (2021), discussed in 2024 ODPa Policy Review Report, *supra* note 2.

https://scholarship.law.gwu.edu/cgi/viewcontent.cgi?article=2785&context=faculty_publications

While the Court declined to expressly resolve whether officer-created jeopardy must be considered by the trier of fact, its rejection of narrow time-framing meaningfully strengthens the doctrinal footing for departments that expect officers to avoid tactics that unnecessarily create or heighten jeopardy and that evaluate force within a broader temporal frame consistent with California’s “necessity” standard under AB 392⁶ and Penal Code § 835a.⁷ Lee’s 2025 commentary on *Barnes* underscores how the decision opens space for agencies and courts to treat officer-created jeopardy as a core part of the reasonableness analysis.⁸

2. Towards a Professional Consensus: NACOLE 2025

The concept of officer-created jeopardy has also gained prominence in national oversight practice. At the 2025 NACOLE Annual Conference, a dedicated session titled “*Officer Created Jeopardy and How It Results in Deadly Force Incidents*” was included in the main program (Day 3, October 29, 3:30–5:00 p.m.),⁹ reflecting that civilian oversight agencies across the country are treating this doctrine as a critical framework for assessing and preventing harmful force incidents.

III. 2025 ODPa GENERAL RECOMMENDATIONS FOR PAB AND BPD CONSIDERATION

For the 2025 annual convening of Policy 300, ODPa respectfully reaffirms and updates its prior recommendation:

1. Codify *Officer-Created Jeopardy* in Policy 300. Add an express definition and accompanying principles that:
 - a) recognize pre-incident tactical decision-making as part of the totality of circumstances, and
 - b) direct officers to avoid tactics that unnecessarily create or escalate risk.
2. Align Policy Language with *Barnes* and merging Best Practices.

Make clear that BPD will evaluate uses of force in light of both the officer’s and the subject’s conduct leading up to the use of force, consistent with *Barnes*’ rejection of narrow time-framing and with the officer-created jeopardy framework developed in the academic literature and increasingly applied by oversight agencies.

⁶AB 392, Weber. Peace officers: deadly force.

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB392

⁷ Penal Code § 835a

https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PEN§ionNum=835a.

⁸ Cynthia Lee, *Police Officer Use of Force and Officer-Created Jeopardy After Barnes v. Felix: The Supreme Court’s Important (Albeit Incomplete) Step in the Right Direction*, 17 ConLawNOW 13 (2025).

https://scholarship.law.gwu.edu/faculty_publications/1801/

⁹ NACOLE, 2025 Annual NACOLE Conference: Reckoning & Resilience in the Post-George Floyd Era, Day 3 Schedule (Oct. 29, 2025) (“*Officer Created Jeopardy and How It Results in Deadly Force Incidents*,” 3:30–5:00 p.m.). https://assets.nationbuilder.com/nacole/pages/1822/attachments/original/1761416665/Printable_Schedule.as_of_10.25.2025.docx.pdf?1761416665

3. Integrate Doctrine into Training, Supervision, and Review.

Incorporate officer-created jeopardy into:

- a) De-escalation and tactical decision-making training;
- b) Supervisory coaching and early intervention to include after action BWC; and
- c) After-action and critical incident reviews, including PAB and ODPa reviews of serious incidents.

IV. RECOMMENDED UPDATED MODEL LANGUAGE FOR POLICY 300

The following draft language is offered as model text for consideration. It is intentionally concise and designed to be refined in consultation with BPD, the City Attorney, and the PAB.

A. New Definition in Policy 300 (Definitions Section)

Officer-Created Jeopardy – *Pre-incident or pre-seizure decisions, tactics, or omissions by an officer that unnecessarily increase the likelihood that force will be used, or that place the officer or others in greater danger than was reasonably necessary under the circumstances. In evaluating the necessity, proportionality, and reasonableness of force, the Department will consider the totality of the circumstances, including whether reasonably available alternatives (e.g., using time, distance, and cover; requesting additional resources; slowing or pausing the encounter; or disengaging) were feasible and used to avoid creating such jeopardy.*

B. Potential Considerations For New Core Principles- 300.1.3(H):

H. TACTICAL FORESIGHT AND OFFICER-CREATED JEOPARDY. *Consistent with the force minimization, proportionality, and de-escalation tactics set out in this policy, officers are expected to exercise tactical foresight and avoid decisions that unnecessarily create or escalate jeopardy to themselves or others. In reviewing uses of force, the Department will consider, as part of the totality of the circumstances, whether reasonably available alternatives identified in this policy were disregarded in a manner that unnecessarily increased the likelihood that force would be needed.*

C. Add As A New Factor At The End Of 300.3.1:

(t) *In applying subsections (d) (conduct of the involved officer) and (j) (availability of other reasonable and feasible options), whether any avoidable tactical decisions or omissions by the officer unnecessarily created or escalated the risk that force would be needed (“officer-created jeopardy”), recognizing that such conduct is one factor among many in the totality of the circumstances.*

V. REQUESTED ACTION

For purposes of the 2025 annual Use of Force Policy review, ODPA respectfully requests that the PAB:

1. Formally consider further exploring with the BPD the integration of officer-created jeopardy into Policy 300 using language substantially similar to the model above;
2. Request that BPD, PAB and ODPA collaborate on final policy redlines and implementation planning, including training and review implications; and
3. Require that future annual reviews of Policy 300 include an assessment of how officer-created jeopardy is being addressed in practice, including case reviews, training, and supervision.

ODPA stands ready to work with the PAB, BPD, and the City Attorney's Office to finalize language that is legally sound, operationally workable, and aligned with both *Barnes* and evolving best practices in civilian oversight.

Item 9.c.

ODPA Memorandum Titled "Updated 2026 PAB Meeting Schedule"



MEMORANDUM

Date: December 12, 2025
To: Honorable Members of the Police Accountability Board (PAB)
From: Hansel A. Aguilar, Director of Police Accountability (DPA) *Ha*
 Jose D. Murillo, ODPa Policy Analyst *Jm*
Subject: Updated 2026 PAB Meeting Schedule

The purpose of this memorandum is to present the PAB with a proposed 2026 meeting schedule that incorporates feedback from the December 3, 2025 PAB Special Meeting and satisfies the requirements of Berkeley City Charter Section 125(13)(a).¹

Background:

Berkeley City Charter Section 125(13)(a) requires the PAB to “establish a regular meeting schedule consisting of at least eighteen (18) meetings.” Historically, the PAB has met two times each month on the second and fourth Wednesdays, except in August, which is observed as a summer recess, and in November and December, when only one meeting is scheduled to avoid seasonal holidays. In developing the proposed calendar, ODPa staff also considered City-observed holidays as well as other religious and cultural holidays celebrated by community members, but not formally observed by the City of Berkeley.² The ODPa presented a proposed schedule to the PAB on December 3, and the PAB provided feedback.³ The provided feedback and its implementation status are presented in the table below.

PAB Request	Implemented (Yes/No)	Rationale if Not Implemented
Move January meetings to January 7 and 21	No	These dates present logistical challenges for ODPa staff due to planned leave and holiday schedules.
Redistribute meetings scheduled for August	Yes	—
Add City Council meetings to the calendar	Yes	—

¹ Berkeley City Charter Section 125(13)(a): [https://berkeley.municipal.codes/Charter/125\(13\)\(a\)](https://berkeley.municipal.codes/Charter/125(13)(a))

² Pursuant to Resolution No. 70,0666-N.S., it is the policy of the City of Berkeley to avoid scheduling meetings of City Legislative Bodies (City Council, Policy Committees, Commissions, Task Forces) on religious holidays that incorporate significant work restrictions for common observance in the United States.

³ ODPa Memorandum from 12/03/25 PAB Special Meeting titled “2026 PAB Meeting Schedule.”

https://berkeleyca.gov/sites/default/files/legislative-body-meeting-attachments/2025-12-03_PAB_Regular_Meeting_Agenda_Packet_FINALv3.pdf%23page=30

Add City Council meeting material-submission deadlines to the calendar	No	The City Clerk already maintains and publishes a submission-deadline calendar, which is being provided to the PAB for reference.
Add the PAB Annual Report presentation to the calendar	Yes	—
Add specific deadlines required by the Berkeley Municipal Code	Yes	—

Recommendation:

It is recommended that the PAB approve the meeting calendar prepared by the ODP. The proposed schedule integrates City-observed holidays and also accounts for significant religious and cultural holidays observed by community members, but not formally recognized by the City of Berkeley.

Alternatively, the PAB may elect to modify the proposed schedule, provided that any revisions maintain a minimum of eighteen meetings per year, avoid City-observed holidays, and continue to honor the identified religious and cultural holidays.

Attachments:

1. Proposed Meeting Schedule for 2026
2. 2026 Berkeley City Council Meeting Material Submission Timelines
3. 2026 City Holiday Calendar
4. 2026 Cultural and Religious Holiday Calendar

2026 PAB MEETING CLENDAR

JAN

S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14*	15	16	17
18	19	20	21	22	23	24
25	26	27	28*	29	30	31

*PAB Nominations and Election of Chair and Vice Chair

FEB

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28

MAR*

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

*Annual Report to be presented in March

APR

S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

MAY

S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

JUN

S	M	T	W	T	F	S
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NACOLE from 11/8-11/12

City Council Meeting BMC 2.100.050 Due Date *City Holiday *PAB Meeting *Reduced Service Day

CITY CLERK DEPARTMENT 2026 COUNCIL MEETING TIMELINE

COUNCIL MEETING	THURSDAY 12:00 PM - Day 33 - DEPT. REPORTS DUE TO CLERK	MONDAY 5:00 PM - Day 22 - COUNCIL MEMBER REPORTS DUE TO CLERK	THURSDAY 12:00 PM - Day 19 - AGENDA COMMITTEE PACKET TO PRINT	MONDAY 2:30 PM - Day 15 - AGENDA COMMITTEE MEETING	WEDNESDAY 11:00 AM - Day 13 - FINAL AGENDA MEETING (PRINT AGENDA ON WED.)	THURSDAY By 5:00 PM - Day 12 - COUNCIL AGENDA DELIVERY
Winter Recess [December 3, 2025 through January 19, 2026]						
Jan 20	12/18	12/29	1/2 (Fri)	1/5	1/7	1/8
Jan 27	12/26 (Fri)	1/5	1/8	1/12	1/14	1/15
Feb 10	1/8	1/20 (Tue)	1/22	1/26	1/28	1/29
Feb 24	1/22	2/2	2/5	2/9	2/11	2/11 (Wed)
Mar 10	2/5	2/17 (Tue)	2/19	2/23	2/25	2/26
Mar 24	2/19	3/2	3/5	3/9	3/11	3/12
Spring Recess [March 25 through April 13, 2026]						
Apr 14	3/12	3/23	3/26	3/31 (Tue)	4/1	4/2
Apr 21	3/19	3/30	4/2	4/6	4/8	4/9
Apr 28	3/26	4/6	4/9	4/13	4/15	4/16
May 12	4/9	4/20	4/23	4/27	4/29	4/30
May 19	4/16	4/27	4/30	5/4	5/6	5/7
Jun 9	5/7	5/19 (Tue)	5/21	5/28 (Thur)	5/28 (Thur)	5/29 (Fri)
Jun 16	5/14	5/26 (Tue)	5/28	6/1	6/3	6/4
Jun 30	5/28	6/8	6/11	6/15	6/17	6/18
Jul 7	6/4	6/15	6/18	6/22	6/24	6/25
Jul 14	6/11	6/22	6/25	6/29	7/1	7/2
Jul 28	6/25	7/6	7/9	7/13	7/15	7/16
Summer Recess [July 29 through September 14, 2026]						
Sep 15	8/13	8/24	8/27	8/31	9/2	9/3
Sep 29	8/27	9/8 (Tue)	9/10	9/14	9/16	9/17
Oct 13	9/10	9/21	9/24	9/28	9/30	10/1
Oct 27	9/24	10/5	10/8	10/13 (Tue)	10/14	10/15
Nov 17	10/15	10/26	10/29	11/2	11/4	11/5
Dec 1	10/29	11/9	11/12	11/16	11/18	11/19
Dec 15	11/12	11/23	11/25 (Wed)	11/30	12/2	12/3
Winter Recess [December 16, 2025 through January 18, 2027]						

VTO Affected Dates	Holiday Affected Dates	Religious Holiday Affected Date
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Reports not submitted by the deadlines listed will not be included on the agenda.

Updated 9/19/2025



2026 CITY CALENDAR

JANUARY						
Sun	Mon	Tues	Wed	Thur	Fri	Sat
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FEBRUARY						
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MARCH						
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AUGUST						
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SEPTEMBER						
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NOVEMBER						
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DECEMBER						
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CITY OF BERKELEY RECOGNIZED HOLIDAYS / OBSERVANCES

- 1/1 New Year's Day
- 1/19 Martin Luther King Jr.'s Birthday
- 2/12 Lincoln's Birthday
- 2/16 Washington's Birthday
- 3/31 Cesar Chavez Day - Obs 3/30
- 5/19 Malcolm X's Birthday - Obs 5/18
- 5/25 Memorial Day

- 6/19 Juneteenth
- 7/4 Independence Day - Obs 7/3
- 9/7 Labor Day
- 10/12 Indigenous Peoples' Day
- 11/11 Veterans Day
- 11/26-27 Thanksgiving Day/Day After
- 12/25 Christmas Day

- Pay Day
- Observed Holidays
- Voluntary Time Off (VTO) Days
- New Employee Orientation

City Policy Regarding the Scheduling of City Meetings on All Significant Religious Holidays

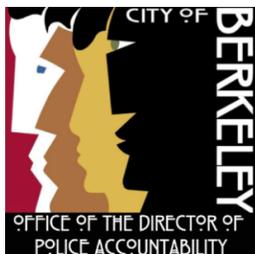
Pursuant to Resolution No. 70,066-N.S., it is the policy of the City to avoid scheduling meetings of City Legislative Bodies (City Council, Policy Committees, Commissions, Task Forces) on religious holidays that incorporate significant work restrictions for common observance in the United States. City legislative bodies must avoid scheduling meetings on the religious holidays listed below.

Religion	Holiday	2026 Date(s)
Shinto	New Year	1/1/2026 thru 1/3/2026
Hindu	Makara Sankranti	1/14/2026
Cultural	Chinese New Year (Eve, Day, Lantern Festival)	2/16, 2/17, 3/3
Islam	Ramadan (Eve & First Night)	2/17/2026 thru 2/18/2026
Hindu	Holi	3/3/2026
Islam	Eid al-Fitr	3/19/2026 thru 3/20/2026
Cultural	Nowruz*	3/21/2026
Jewish	Passover Nights 1 & 2 (7*, 8*)	4/1 - 4/2 (4/8, 4/9)
Christian	Good Friday	4/3/2026
Christian	Easter Sunday	4/5/2026
Jewish	Shavuot*	5/21/2026 thru 5/23/2026
Islam	Eid al-Adha	5/26/2026 thru 5/27/2026
Buddhist	Vesak	5/31/2026
Shinto	Obon Ceremony*	8/13/2026 thru 8/15/2026
Jewish	Rosh Hashanah	9/11/2026 thru 9/13/2026
Jewish	Yom Kippur	9/20/2026 thru 9/21/2026
Jewish	Sukkot (1st Day)*	9/25/2026 thru 9/26/2026
Jewish	Shmini Atzeret/ Simchat Torah*	10/2/2026 thru 10/4/2026
Hindu	Dussehra	10/20/2026
Hindu	Diwali	11/8/2026
Baha'i Faith	Birth of Bab	11/10/2026
Baha'i Faith	Birth of Baha'u'llah	11/11/2026
Jewish	Chanukah (1st night)	12/4/2026
Christian	Christmas	12/25/2026
Cultural	Kwanzaa	12/26/2026 thru 1/1/2027
Jewish	Shabbat (Friday sunset to Saturday sunset)*	Weekly

* Meetings not prohibited, but avoid scheduling meetings if possible

Item 9.d.

ODPA Memorandum Titled “Operational Impacts of FY2026 Hiring Freeze and Proposed Interim Complaint Triage Framework”



MEMORANDUM

Date: December 17, 2025
To: Honorable Members of the Police Accountability Board (PAB)
From: Hansel A. Aguilar, Director of Police Accountability (DPA) *HAA*
Subject: Operational Impacts of FY2026 Hiring Freeze and Proposed Interim Complaint Triage Framework

The purpose of this memorandum is to summarize the operational impacts of the FY2026¹ hiring freeze on ODPa's Charter-mandated functions. It also proposes an interim, time-limited triage framework modeled conceptually on the New York City CCRB's Strategic Resource Allocation Determination (SRAD)² approach to help the City maintain investigation quality and legal compliance while ODPa remains under sustained staffing constraints.

I. Background:

A. Hiring Freeze Actions Affecting ODPa Staffing

- On May 20, 2025, Council directed the City Manager to work with Charter Officers to develop a hiring freeze plan and address vacant positions.
- On June 24, 2025, Council adopted "Budget Refinements." While the initial proposal included freezing four vacant Charter Officer FTEs, the final adopted action froze two vacant Charter Officer positions.
- The adopted recommendation explicitly included freezes within ODPa, freezing one vacant Investigator position and one Associate Management Analyst position in addition to other Charter Office freezes.

B. No Corresponding Workplan Adjustment

ODPa's Charter workload has not been reduced through any Council-mandated workplan adjustments. ODPa continues to receive complaints at consistent rates³ and faces

¹ See Attachment: ODPa FY2026 Hiring Freeze Timeline and Documents (May–June 2025), including Council direction and the adopted June 24 "Budget Refinements" item.

² New York City CCRB SRAD Approach: <https://www.nyc.gov/site/ccrb/about/frequently-asked-questions-faq.page>

³ As of December 12, 2025, ODPa received 42 complaints, compared to 51 complaints during the same period in 2024. These complaints correspond to 228 allegations in 2025, compared to 459 allegations during the same period in 2024. The higher allegation count in 2024 reflects significant concentration among repeat filings, whereas 2025 intake reflects a higher number of unique complainants and substantially less concentration among repeat filers.

ongoing completion challenges, particularly in investigations, as reflected in ODPa's reporting and operational experience.

C. ODPa's Dual Operational Burden

ODPa's investigative capacity is further constrained by the reality that ODPa functions as both:

1. The investigative body;
2. The operational/administrative support to a Charter-mandated Board meeting at least 18 times annually.

II. Legal and Compliance Context Driving the Need for Triage:

A. Charter Deadlines Are Unusually Compressed

Charter Section 125(18)⁴ imposes a 120-day investigative completion deadline and a 240-day outer deadline for the full discipline process, unless statutory exceptions apply.

B. Staffing Constraints Create Structural Risk

ODPa has documented that vacancies and hiring constraints create acute risks, including missed deadlines that can bar discipline, procedural invalidation, and erosion of procedural safeguards for both complainants and subject officers.

ODPa pursued temporary stopgap measures (such as AppleOne contractors and temporary recruitment), but noted that these measures cannot fully meet Charter-required volume and consistency.

III. Why Interim Triage and Administrative Closure Framework Is Necessary Now:

In the absence of staffing restoration or a Council-adjusted work plan, ODPa must adopt a temporary operational safeguard that:

- Prioritizes serious matters for full investigation within Charter timelines.
- Prevents systemic over-acceptance that predictably results in late completions.
- Preserves ODPa's ability to deliver high-quality investigations where the stakes are highest.

As an immediate mitigation measure, ODPa has recommended the administrative closure of certain categories of personnel complaints. This memorandum proposes formalizing a temporary framework with PAB concurrence so the approach is consistent, transparent, and revisitable.

⁴ Berkeley City Charter Section 125 (18): [https://berkeley.municipal.codes/Charter/125\(18\)](https://berkeley.municipal.codes/Charter/125(18))

IV. Model Reference: NYC CCRB SRAD (Conceptual):

NYC CCRB publicly adopted a temporary approach to pause investigation of specified lower-level allegations when they are the only allegations present, while continuing to investigate those same allegations when paired with more serious allegations. ODPa proposes adopting a conceptually similar structure tailored to Berkeley's Charter system and ODPa's jurisdiction.

V. Proposed Interim Framework for Berkeley ODPa:

A. Proposed Structure (Two-Part Rule)

Rule 1. Administrative Closure for Single Allegation Lower Level Complaints

ODPA would temporarily administratively close complaints that contain only one or more allegations from a defined Tier 3 list. These matters would receive written notice to the complainant, would be logged for pattern monitoring, and could be reopened upon receipt of new or clarifying information.

Rule 2. Full Investigation When Any Tier 1 or Tier 2 Allegation Exists

If any allegation in Tier 1 or Tier 2 is present in the complaint, ODPa would conduct a full investigation of the entire matter, including any lower-level allegations within the same complaint.

B. Triage Tiers (Draft for PAB Consideration)

Tier 1 — Highest Priority (Always Investigate):

- Use of force; Unlawful search/seizure; Biased policing/discrimination;
- Retaliation for protected activity; Sexual misconduct;
- Dishonesty tied to evidence/case outcome; Wrongful arrest/detention;
- Serious threats coupled with action; Violations involving injury; Interference with medical care.

Tier 2: Investigate as Capacity Allows, but Presumptively Within Timelines:

- Policy violations with tangible civil-rights impact but less acute harm;
- Failures in complaint handling where the underlying incident involves Tier 1 conduct;
- Supervisory failures connected to repeated patterns.

Tier 3: Temporarily Eligible for Administrative Closure When They Are the Only Allegations Present:

- Discourteous words/demeanor without bias indicators, threats, or coercive action;

- Failure/refusal to provide identifying information (name/ID number) with no other allegations;
- Failure/refusal to explain the complaint process or how to file a complaint with no other allegations;
- Minor service-level conduct concerns that do not allege rights violations, force, detention, discrimination, or dishonesty connected to an enforcement outcome;
- Threats without action and without indicators of retaliation, coercion, or escalation.

C. Notice, Documentation, and Reopening Criteria

For Tier 3 administrative closures, ODPa would:

- Issue a standardized closure letter explaining the temporary triage policy, that the complaint is recorded and retained, and that ODPa is prioritizing higher-severity matters while under hiring/fiscal constraints;
- Retain Tier 3 complaints for pattern analysis, including potential pattern-based investigations or policy review referrals.

D. Reporting and Transparency to PAB

ODPA would report to the PAB at a defined cadence, such as quarterly, including:

- Number of complaints received.
- Number administratively closed under Tier 3.
- Number investigated (Tier 1/2).
- Average days-to-completion and late-case counts.
- Any pattern flags arising from Tier 3 closures.

E. Sunset and Resumption Triggers

This interim policy would automatically sunset on the earliest of:

- Restoration of ODPa staffing capacity (e.g., hiring freeze lifted and hiring authorization restored for the impacted positions); or
- A defined sunset date, such as six months after adoption unless renewed by PAB action.

VI. Requested PAB Action:

ODPA requests that the PAB:

1. Adopt an Interim Complaint Triage and Administrative Closure Directive consistent with Section V.
2. Direct ODPA to return within sixty to ninety days with:
 - Finalized Tier definitions aligned to Berkeley’s allegation categories.
 - The draft standardized notice template for PAB review.
3. Schedule a public-facing discussion item as appropriate to ensure transparency about the operational necessity created by fiscal constraints, while maintaining personnel confidentiality.

Relevant Documents

1. ODPA FY2026 Hiring Freeze Timeline and Documents (May–June 2025), including Council direction and the adopted June 24 “Budget Refinements” item.
Source:
<https://berkeleyca.gov/sites/default/files/documents/ODPA%20Hiring%20Freeze%20Timeline%20and%20DocumentsFinal.pdf>

Off Agenda 1
Policy Review Status Updates

Updated December 9, 2025



POLICY REVIEW STATUS REPORT

Guiding Authority

Section 125(3)(a)(1) and Section 125(17)(a) of the Berkeley City Charter¹

Case Load Overview

As of December 9, 2025, the Police Accountability Board (PAB) has six (6) open policy reviews. There has been one (1) new potential policy review submitted to the ODPa since the regular meeting on November 5, 2025, that is undergoing review before presentation to the PAB.

Policy Review Number	2023-PR-0007 ²
Policy Topic	Restraining Orders & Interactions with the Elderly
Relevant Policy	BPD Policy 313 "Senior and Disability Victimization" BPD Policy 430 "Civil Disputes"
Status	Review In Progress; Records Obtained
Date Presented to the PAB	7/24/2024
Anticipated Completion	January 2026
Assigned To	ODPA
Summary	
The complainant reports ongoing disturbances, harassment, and restraining order violations by a neighbor's caretaker, raising concerns about enforcement by the Berkeley Police Department. This policy review will examine BPD's handling of interactions with elder adults and its practices regarding restraining orders, as the	

¹ Berkeley City Charter: <https://berkeley.municipal.codes/Charter/125>

² On December 11, 2024, the PAB voted to divide this review in two parts. The first looking at the issue of restraining orders and the second into BPD's interactions with the elderly. The PAB was presented with part one on January 8, 2025.

Updated December 9, 2025

complainant indicates possible misunderstandings of order terms. Despite multiple encounters and existing orders, the complainant reports continued issues with enforcement.

Activity Report

The ODPA staff is finalizing the report and is slated for presentation at the PAB's December 17, 2025 Special Meeting.

Policy Review Number	2023-PR-0008
Policy Topic	Off-Duty Conduct
Relevant Policy	BPD Policy 321 "Standard of Conduct" BPD Policy 401 "Fair and Impartial Policing" BPD Policy 344 "Off-Duty Law Enforcement Actions"
Status	Review in Progress; Assigned to Policy Review Subcommittee
Date Presented to the PAB	10/11/2023
Anticipated Completion	The review is currently being evaluated to determine the appropriate next steps and timeline for completion.
Assigned To	PAB – Assigned to Policy Review Subcommittee

Summary

The complainant expresses concerns about off-duty police officers exhibiting harmful behavior and recommends improving the Police Accountability Board's oversight of off-duty conduct, including anti-racist hiring practices, stronger discipline measures, and increased transparency on racial profiling. They highlighted relevant policies and noted that the PAB is considering a subcommittee dedicated to off-duty law enforcement actions.

Activity Report

Evaluating for potential referrals to subcommittee or PAB members.

Policy Review Number	2024-PR-0008
Policy Topic	Records Retention
Relevant Policy	BPD Policy 804 "Record Maintenance and Release"
Status	Open
Date Presented to the PAB	1/8/2025
Anticipated Completion	The review is currently being evaluated to determine the appropriate next steps and timeline for completion.
Assigned To	ODPA

Summary

The ODPA received a complaint regarding BPD's inability to provide past officer rosters in response to a PRA request, as the records are no longer maintained. The

Updated December 9, 2025

complainant recommended that BPD adopt a policy to retain and provide such rosters upon request.

Activity Report

ODPA staff are currently reviewing relevant materials in preparation for a future presentation to the PAB.

Policy Review Number	2025-PR-0001
Policy Topic	Contact Between Complaint Subject Officer and Complainant During Calls for Service
Relevant Policy	BPD Policy 1004 "Anti-Retaliation" BPD Policy 1010 "Personnel Complaints"
Status	Open
Date Presented to the PAB	02/19/2025
Anticipated Completion	The review is currently being evaluated to determine the appropriate next steps and timeline for completion.
Assigned To	PAB Member w/ Support of ODPA

Summary

The Complainant reported two interactions with BPD in January 2025, involving officers who were either subjects of their prior complaints to the PAB or involved in other litigation. They expressed concerns about potential retaliation or bias, believing they should not interact with officers they had previously filed complaints against.

Activity Report

Board Member Calavita updated the PAB during its regular meeting on April 23, 2025. Policy Analyst Murillo and Board Member Calavita will collaborate to draft potential language and consult with BPD about feasibility and any potential concerns. ODPA Staff drafted and forwarded that request on May 12, 2025 and is awaiting a response.

Policy Review Number	2025-PR-0004
Policy Topic	Public Recording of Police Activity
Relevant Policy	BPD Policy 426 "Public Recording of Police Activity"
Status	Open
Date Presented to the PAB	6/25/2025
Anticipated Completion	The review is currently being evaluated to determine the appropriate next steps and timeline for completion.
Assigned To	PAB Member w/ Support of ODPA

Summary

The Complainant expressed concerns with the Berkeley Police Department's General Order D-2, "Public Recording of Police Activity," (now BPD Policy 426) following an

Updated December 9, 2025

incident on June 4, 2025, in which they allege they were physically prevented by three officers from observing and documenting police activity at 8th and Harrison Street. The Complainant argues that the policy fails to clearly affirm the First Amendment rights of onlookers and does not adequately direct officers to limit the use of “police lines” to situations where such restrictions are necessary for officer safety or to protect the integrity of an investigation.

Activity Report

Board Member Calavita reviewed BPD Policy 426 and identified sections that may merit closer examination. ODPa staff is providing support by comparing policies from other jurisdictions and researching best practices.

Policy Review Number	2025-PR-0005
Policy Topic	Encampment Clearing Operations
Relevant Policy	Practice and procedure review
Status	Open
Date Presented to the PAB	6/25/2025
Anticipated Completion	The review is currently being evaluated to determine the appropriate next steps and timeline for completion.
Assigned To	PAB Subcommittee

Summary

The Complainant raised concerns about a June 4, 2025, multi-department operation at an encampment on 8th and Harrison Streets, alleging excessive force, improper use of less-lethal weapons, suppression of public observation, and lack of notice to residents in violation of due process. They further argued that accountability should extend beyond individual officers to command staff who design and authorize operational plans, and recommended the PAB adopt policies creating a new category of misconduct for such leadership decisions.

Activity Report

The subcommittee has met and identified preliminary data and information needs. ODPa staff collected the requested materials and provided them to the subcommittee.

Updated December 9, 2025

The following policy reviews have been temporarily suspended and will be reconsidered at the 2026 PAB Planning Session

Policy Review No.	Topic
2487	Involuntary Injections / Medical Care
2488	Use of Force During Arrest
17	Mental Health Response Use of Force
2023-PR-0006	Parking Enforcement Practices
2023-PR-0009	Use of Force – Handcuffing
2024-PR-0005	Downtown Ambassador Program
2024-PR-0006	Specialized Care Unit

Off Agenda 2

Legislative Updates Relevant to the PAB's Work

Public



MEMORANDUM

Date: December 12, 2025
To: Honorable Members of the Police Accountability Board
From: Hansel Aguilar, Director of Police Accountability *Ha*
 Jose Murillo, ODPa Policy Analyst *Jm*
Subject: Legislative Updates

The purpose of this memorandum is to provide a legislative update to the PAB, enabling them to stay informed about changes in local, state, and federal law.

State Legislative Updates¹

The following bills relevant to the PAB's work have been introduced in the state of California:

NAME OF LEGISLATION	STATUS	SUMMARY/PURPOSE
<u>SB 385 "Peace Officers"</u>	<i>(Passed) 2025-10-01 - Chaptered by Secretary of State. Chapter 218, Statutes of 2025.</i>	This bill, SB 385, requires peace officers hired on or after January 1, 2029, to obtain a modern policing degree or a bachelor's or advanced degree from an accredited institution within 36 months of employment. It builds on existing certification and education requirements and takes effect immediately as an urgency statute.
<u>AB1178 "Peace Officers: Confidentiality of Records"</u>	<i>(Passed) 2025-10-11 - Chaptered by Secretary of State - Chapter 635, Statutes of 2025.</i>	This bill expands redaction requirements under the California Public Records Act, requiring law enforcement agencies to remove identifying details of undercover officers, task force members, and those with verified death threats. It imposes a state-

¹ <https://post.ca.gov/Status-of-Current-Legislation>

		mandated local program and includes legislative findings justifying access limitations.
<u>AB1388 “Law enforcement: settlement agreements.”</u>	<i>(Passed) 2025-10-13 - Chaptered by Secretary of State - Chapter 729, Statutes of 2025.</i>	AB 1388 aims to enhance transparency in law enforcement by prohibiting agencies from entering into nondisclosure agreements regarding police misconduct.
<u>SB707 “Open Meetings: Meeting and teleconference requirements”</u>	<i>(Passed) 2025-10-03 - Chaptered by Secretary of State. Chapter 327, Statutes of 2025.</i>	SB 707 expands public meeting access by requiring remote participation, interpretation services, and multilingual agendas for local government bodies until 2030. It revises teleconferencing rules and extends provisions for emergencies and just cause absences.
<u>SB-627 “Law enforcement: masks.”</u>	<i>(Passed) 2025-09-20 - Chaptered by Secretary of State. Chapter 125, Statutes of 2025.</i>	SB 627 would make it a misdemeanor for law enforcement officers to wear masks or personal disguises while interacting with the public, with certain exceptions, and expresses intent to allow protective gear for SWAT officers and require visible identification on uniforms.
<u>SB524 “Law Enforcement Agencies: Artificial Intelligence”</u>	<i>(Passed) 2025-10-10 - Chaptered by Secretary of State. Chapter 587, Statutes of 2025.</i>	This bill requires law enforcement agencies to adopt policies on the use of AI in preparing official reports, including disclosure statements, officer signatures, retention of AI-generated drafts, and audit trails. It also restricts vendors from using agency data and provides for state reimbursement of mandated local costs.
<u>AB487 “Peace officers: confidentiality of records.”</u>	<i>(Passed) 2025-10-06 - Chaptered by Secretary of State - Chapter 383, Statutes of 2025.</i>	This bill would extend access to otherwise confidential peace officer personnel records to civilian law-enforcement oversight boards and county inspectors general for use in their investigations, while requiring these entities to maintain confidentiality and allowing them to meet in closed session to review the records. It would also incorporate additional changes to Penal Code Section 832.7 if AB 1178 or AB 1388 are enacted and this bill is enacted last.

Additional legislation pertaining to public safety in the state of California may be monitored here: <https://legiscan.com/CA/legislation> .

The BPD's Policy and Training Bureau prepared a legislative update summarizing legal changes affecting law enforcement in 2024 and 2025. Based on the California Peace Officers' Association's 2024 and 2025 Legislative Update Manual, it highlights key updates from both years but does not cover every legislative change. Unless otherwise noted, the changes outlined in the updates took affect January 1, 2024 or January 1, 2025. The following BPD Policies include the legislative updates:

SOURCE	LINK
BPD Policy 1505 “2024 Legislative Update”	https://berkeleyca.gov/sites/default/files/documents/RELEASE_20240301_T161429_Berkeley%20PD%20Policy%20Manual.pdf#Page=1037
BPD Policy 1506 “2025 Legislative Update”	https://berkeleyca.gov/sites/default/files/documents/RELEASE_20240301_T161429_Berkeley%20PD%20Policy%20Manual.pdf#Page=1041
The California Peace Officers Association also provides a yearly California Legislative and Legal Digest.	https://cpoa.org/wp-content/uploads/2024/11/2025-Legislative-Legal-Digest.pdf

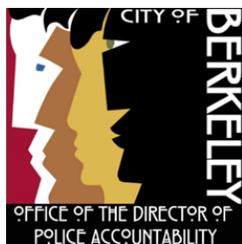
Lexipol Policy Updates

There have been no Lexipol policy updates since the PAB's last meeting on December 3, 2025.

City of Berkeley Council Meeting Updates

The City Council is currently on Winter Recess from December 3, 2025, through January 19, 2026. The Council's first meeting of the new year will be held on January 20, 2026.

Off Agenda 3
List of Pending PAB Request



MEMORANDUM

Date: December 17, 2025
To: Honorable Members Police Accountability Board (PAB)
From: Hansel Aguilar, Director of Police Accountability (DPA) *HA*
 Jose Murillo, ODPa Policy Analyst *JM*
 Syed Mehdi, ODPa Data Analyst *SM*
Subject: Summary of PAB Requests (January 2025 - December 2025)

This memorandum summarizes ten requests that remain active made by the Police Accountability Board (PAB) during eight meetings held between January 8, 2025, and December 3, 2025. Seven of which were PAB Regular Meetings and one was a PAB Special Meeting. The distribution of requests by stakeholders is as follows: Eight requests were directed to the Office of the Director of Police Accountability (ODPA), two to the Berkeley Police Department (BPD), one to the Mayor's Office, one to the City Clerk's Office, and one to the City Attorney's Office. This consolidated log supports clearer tracking, coordination, and follow-up by all relevant parties.

PAB Requests (Jan 2025 – December 2025)

No.	Meeting Date/Link	Request to	Request (Time Stamp)	Status/Note
1	1/8/2025 PAB Regular Meeting Recording: https://youtu.be/56WiTDQB_jo?si=Go90zuEmVqEhNRiH	ODPA, BPD	The PAB requested that staff collaborate with the Berkeley Police Department prior to establishing a public-facing webpage containing information on Restraining Orders and related resources. (1:20:33 - 1:21:30)	Open - This request is still active.
	1/8/2025 PAB Regular Meeting Minutes: https://berkeleyca.gov/sites/default/files/legislative-body-meeting-minutes/Final%202025-01-08%20Regular%20MeetingMinutes.pdf			

2	<p>2/19/2025 PAB Regular Meeting Recording: https://youtu.be/9jOYSyLtZc0?si=JtMEtoSvHbkYpDWL</p> <p>2/19/2025 PAB Regular Meeting Minutes: https://berkeleyca.gov/sites/default/files/legislative-body-meeting-minutes/2025-02-19%20Regular%20Meeting%20Minutes.v2.pdf</p>	ODPA	<p>The PAB requested that staff explore whether other agencies have comparable policies on conflicts of interest when officers are responding to calls made by a party who has filed a complaint against them. (1:11:30 - 1:12:08)</p>	<p>Open – In relation to 2025-PR-0001</p> <p>This request is still active because the Board requested this as part of the policy review.</p>
3	<p>2/19/2025 PAB Regular Meeting Recording: https://youtu.be/9jOYSyLtZc0?si=JtMEtoSvHbkYpDWL</p> <p>2/19/2025 PAB Regular Meeting Minutes: https://berkeleyca.gov/sites/default/files/legislative-body-meeting-minutes/2025-02-19%20Regular%20Meeting%20Minutes.v2.pdf</p>	Mayor's Office	<p>The PAB requested that staff coordinate with the Mayor's Office to obtain advance notice of meeting agendas. (43:20 - 44:30)</p>	Open - This request is still active.
4	<p>5/07/2025 PAB Regular Meeting Recording: https://www.youtube.com/watch?v=pL5VhNQDU60</p> <p>5/07/2025 PAB Regular Meeting Draft Minutes: https://berkeleyca.gov/sites/default/files/legislative-body-meeting-minutes/2025-05-07%20PAB%20Regular%20Meeting%20Draft%20Minutes.pdf</p>	City Clerk's Office	<p>The PAB requests the opportunity to provide input on the records retention schedule. The ODPA is asked to contact the City Clerk's Office to determine the status, scope, and timeline of the project, including whether any consultants or departments will be involved, in order to</p>	<p>Open – This request is still active</p> <p>Link to Memorandum Titled "Records Retention Schedule of the BPD,</p>

	ative-body-meeting-minutes/DRAFT%202025-05-07%20Regular%20Meeting%20Minutes.v2.pdf		identify opportunities for engagement. (22:19 – 24:41)	PAB and ODPAs": https://berkeleyca.gov/sites/default/files/legislative-body-meeting-attachments/2025-05-07%20PAB%20Regular%20Meeting%20Packet%20-%20SUPP%201.pdf#page=3
5	5/21/2025 PAB Regular Meeting Recording: https://www.youtube.com/watch?v=mFBeoH6IXWI 5/21/2025 PAB Regular Meeting Draft Minutes: https://berkeleyca.gov/sites/default/files/legislative-body-meeting-minutes/DRAFT 2025-05-21 Regular Meeting Minutes Updated.pdf	ODPA	The PAB requests that ODPAs staff look into department retention schedules of nearby jurisdictions, what NACOLE recommendations constitute. (1:37:21-1:37:54)	Open – This request is still active.
6	9/03/2025 PAB Regular Meeting Recording: https://www.youtube.com/watch?v=0xsKsHlnr7c&t=1824s 9/03/2025 PAB Regular Meeting Draft Minutes: https://berkeleyca.gov/sites/default/files/legislative-body-meeting-minutes/DRAFT 2025-09-03 Regular Meeting Minutes Updated.pdf	ODPA, BPD, CAO	The PAB requests that ODPAs staff refer to the Berkeley Police Department and City Attorney's Office for further inquiry with a response in 30 days regarding 2025-PR-0006 (LED Flashing Lights) (44:14 – 45:35)	Open – ODPAs Staff will work with other stakeholders once all materials have been finalized.

	ative-body-meeting-minutes/DRAFT 2025-09-03 Regular Meeting Minutes.pdf			
7	<p>9/17/2025 PAB Regular Meeting Recording: https://youtu.be/foxCSOZ-qX0?si=nluyj5bY1giNBdsD</p> <p>9/17/2025 PAB Regular Meeting Draft Minutes: https://berkeleyca.gov/sites/default/files/legislative-body-meeting-minutes/DRAFT 2025-09-17 Regular Meeting Minutes.pdf</p>	ODPA	<p>The PAB requests that ODPA staff coordinate with community member Andrea Prichett to place a future agenda item on the Specialized Care Unit (SCU) transition to County oversight and invite a County representative to participate via phone or Zoom.</p> <p>(16:15-17:58)</p>	Open – This request is still active.
8	<p>11/05/2025 PAB Regular Meeting Recording: https://www.youtube.com/watch?v=IPytFxB6jyw&t=25s</p> <p>11/05/2025 PAB Regular Meeting Draft Minutes: https://berkeleyca.gov/sites/default/files/legislative-body-meeting-minutes/DRAFT 2025-11-05 Regular Meeting Minutes .pdf</p>	ODPA	<p>The PAB requested that ODPA staff place a six-month follow-up item on the agenda to evaluate the transparency impacts of radio encryption by BPD.</p> <p>(1:43:00-1:43:17)</p>	Open – This request is still active.
9	<p>11/05/2025 PAB Regular Meeting Recording: https://www.youtube.com/watch?v=IPytFxB6jyw&t=25s</p> <p>11/05/2025 PAB Regular Meeting Draft</p>	ODPA	<p>The PAB requested that ODPA staff start identifying alternative fixed-camera vendors so the PAB can make an informed recommendation to Council.</p>	Open – This request is still active.

	Minutes: https://berkeleyca.gov/sites/default/files/legislative-body-meeting-minutes/DRAFT 2025-11-05 Regular Meeting Minutes .pdf		(1:51:53-1:52:24)	
10	12/03/2025 PAB Special Meeting Recording: https://youtu.be/qW6Y51rLwRA?si=xWxHIJVNS_GKSfJ7 12/03/2025 PAB Regular Meeting Draft Minutes: https://berkeleyca.gov/sites/default/files/legislative-body-meeting-minutes/DRAFT 2025-12-03 Special Meeting Minutes.pdf	ODPA	The PAB requested that ODPA staff poll Board members regarding Saturday availability in late January and early February for the PAB Annual Retreat. (58:54-59:15)	In Progress – Poll has been circulated & responses are pending.