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May 3, 2016

The Hon. Mark Leno  
Member of the Senate, District 11  
State Capital, Room 5100  
Sacramento, CA 95814

Re: Support for SB 1286 (Leno)

Dear Senator Leno:

On behalf of The Bar Association of San Francisco ("BASF"), I write to support SB 1286, your bill to improve transparency, accountability and trust between law enforcement and the public, by allowing greater public access to peace officer records related to serious uses of force and sustained charges of misconduct. We agree that the public has the right to know when officers apply deadly force and when allegations of serious cases of misconduct have been sustained. We agree with San Francisco District Attorney George Gascón, who said: "If the public can't determine whether an officer has been disciplined, they can't assess if accountability mechanisms are working. This contributes to the feeling that police departments are hiding something - even if they're not - which ultimately adds to the mistrust between police and the communities they serve. This dynamic has a detrimental effect on our public safety."

Our Board of Directors convened a Task Force on the Criminal Justice System in 2015, which is composed of prosecutors, law enforcement and civilian oversight agencies (including the Office of Civilian Complaints ("OCC"), defense and civil rights attorneys, judges and academics. The Task Force closely examined SB 1286 and voted overwhelmingly to support SB 1286. This vote occurred after a year-long effort to examine and improve the procedures of San Francisco's OCC. This effort was ultimately postponed because of the constraints on the OCC created by Penal Code §§ 832.5 and 832.7, as interpreted by the California Supreme Court in *Copley Press v. Superior Court* (2006) 39 Cal.4th 1272, which prevent public access to information about sustained complaints of peace officer misconduct and discipline that flows from such misconduct. SB 1286 would allow our Task Force to resume its work with the OCC to improve its ability to examine and investigate the complaints of San Franciscans of abuses by the small number of peace officers whose conduct undermines the commitment, integrity and service of the overwhelming majority of dedicated peace officers who serve honorably.

We are aware of arguments by some district attorneys and other opponents of SB 1286, who wish to retain the unique existing protections for peace officers, but find these arguments unpersuasive. Contrary to claims by these opponents, SB 1286 would not "provide sweeping and unwarranted exceptions to the confidentiality of peace officer personnel files" as Ventura County District Attorney Gregory Totten states. Rather, the SB 1286 provisions are moderate and limited. SB 1286 removes the cloak of secrecy for



peace officer records only when charges have been sustained and involve serious matters, including sexual assault, excessive use of force, unjustified search, detention or arrest, racial or identity profiling, discrimination on the basis of race, color, ethnicity, national origin, age, religion, gender identity or expression, sexual orientation, or mental or physical disability; or when there is the use of deadly force likely to cause death or serious bodily injury, including discharge of a firearm, use of a taser, or use of a baton to the head.

SB 1286 would also remedy another problem faced by San Francisco's OCC. Our Task Force found that the San Francisco OCC was prevented under existing law from even reporting to complainants the basics of the disposition of the complaints they had made. SB 1286 remedies this by allowing disclosure to the complainant whether his/her complaint was sustained, and the nature of the factual findings and whether any discipline was imposed or corrective actions taken.

Finally, SB 1286 does nothing to change the requirements in criminal cases of so-called *Pitchess* motions under Evidence Code section 1043. See *Pitchess v. Superior Court*, 11 Cal.3d 531 (1974). Such motions still must be scrutinized by a court and found to satisfy statutory requirements, and Evidence Code section 1045 still limits substantially the information that may be disclosed.

Over the last few years, police conduct which has resulted in the death or serious injury of young men and women, and even children, in minority communities has been captured on cell phone and surveillance video cameras. These videos have been widely publicized and have provoked concern in our communities. The responses to these incidents have been non-transparent due to existing law. Police and civilian review agencies have responded, but the public has not been able to accurately assess the responses to the publicized conduct. This dynamic has not promoted trust in the adequacy of responses. Our Board of Directors believes that SB 1286 will go far to correct these problems by changing California law based on adherence to transparency as the guiding principle, tempered by appropriate privacy protections.

In sum, BASF supports SB 1286 because it will allow Californians to see how law enforcement and oversight agencies handle confirmed cases of misconduct and excessive force, and because it will help eliminate the public's doubts and suspicions about police that have undermined the good relations between our communities and law enforcement.

Sincerely,

Michael F. Tubach  
President  
The Bar Association of San Francisco