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April 14, 2003

To: Supervisor Yvonne Brathwaite Burke, Chair
Supervisor Gloria Molina
Supervisor Zev Yaroslavsky
Supervisor Don Knabe
Supervisor Michael D. Antonovich

From: David E. Janssen
Chief Administrative Officer

MOTION TO OPPOSE AB 834 (LA SUER) – PEACE OFFICER RECORDS (ITEM NO. 68-A, AGENDA OF APRIL 15, 2003)

Item No. 68-A on the April 15, 2003, Agenda is a motion by Supervisor Molina directing the Los Angeles County Legislative Representative to oppose AB 834 (La Suer).

As amended on April 10, 2003, AB 834 would require agencies employing peace and/or custodial officers to destroy frivolous, unfounded, or exonerated complaints, or portions of such complaints, from personnel records after five years. The amended version of AB 834 narrows the original intent of the bill which would have required all documents related to all citizen complaints, reports and findings to be destroyed after five years.

Existing law requires law enforcement agencies to maintain complaints, reports and findings relating to complaints for at least five years. Also, prior to an officer's promotion, transfer or disciplinary action, the agency must remove complaints that are frivolous, unfounded, or exonerated from the officer's general personnel file and retain them in a separate file deemed to be a personnel record for purposes of the California Public Records Act and not subject to discovery. The types of materials in question include records that are: 1) frivolous - totally and completely without merit or for the sole purpose of harassing an opposing party, 2) unfounded - where the investigation clearly established that the allegation is not true, and 3) exonerated - where the investigation clearly established that the actions of the peace or custodial officer that formed the basis for the complaint are not violations of law or department policy.

According to the Assembly Committee on Public Safety Analysis, supporters of AB 834 contend that keeping these materials does not assist in identifying behavior patterns of rogue officers, has little probative value when deciding promotional or disciplinary issues, and would reduce record keeping and storage costs.

Opponents of AB 834 raise concerns that the measure may not be constitutional because it may limit a defendant's right to discovery. While recent California case law suggests that the five year limit is acceptable, the Federal courts have not ruled on this issue. AB 834 may require agencies to destroy records which under Federal law would otherwise require them to disclose.

The Los Angeles District Attorney is neutral on AB 834 and the Sheriff does not have a position. **Because there is no existing Board policy regarding the destruction of police or custodial officer personnel records, a position on AB 834 is a matter for Board policy determination.**

Supporting AB 834 are the Los Angeles County Professional Peace Officers Association (sponsor), Association for Los Angeles Deputy Sheriffs, California Independent Public Employees Legislative Council, Peace Officers Research Association of California, and Riverside Sheriff's Association. Opposing AB 834 are the American Civil Liberties Union, the California Public Defenders Association, and the San Francisco Public Defender.

AB 834 is scheduled to be heard in the Assembly Public Safety Committee on April 22, 2003.

DEJ: GK
MAL:JF:JKL:ib

c: Executive Officer, Board of Supervisors
County Counsel
Sheriff
District Attorney
Office of Independent Review

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