

The New York Times

By Tim Arango - Feb. 12, 2019

California Has a High Rate of Police Shootings. Could a New Open-Records Law Change That?



Valerie Rivera protested the death of her son Eric, who was shot by police officers while holding a toy gun in Los Angeles last year. Photo-David Mcnew/Getty Images

LOS ANGELES — After her son, Eric, was killed by the police in Los Angeles two years ago when officers mistook a water pistol he was holding for a real gun, Valerie Rivera channeled her grief into activism. She joined Black Lives Matter and lobbied the state legislature to open to the public California’s records on police shootings, which have long been hidden.

She wanted, she recently wrote in a court filing, to “understand what really happened, and to advocate for change so that officers do not kill civilians, and are held accountable when they do, so that other families do not have to suffer as mine has.”

Her efforts paid off. Under a new state law, Ms. Rivera and other members of the public can now request to see the investigative records, prying open for the first time California's strict secrecy laws regarding police shootings and serious misconduct by officers.

But, just as activists and state lawmakers have sought to bring decades-old investigative records to light, police unions have tried to jam the door shut. While police departments have said they would comply, police unions up and down the state, including in Los Angeles, have filed lawsuits challenging the law, arguing that it shouldn't be applied retroactively. The union lawsuits have succeeded in some jurisdictions in getting temporary stays from the court.

The debate has opened up old wounds in a state that has been plagued by a [high rate](#) of killings by police officers, and it has showed how contentious and complex criminal justice reform can be, even after reform measures are passed.

California may be one of the most liberal states in the nation — its politics have shifted substantially in recent decades amid sweeping demographic changes — but paradoxes abound, especially when it comes to police matters and criminal justice. The state has the largest death row in the country, and voters, in a ballot measure, have demanded that the state speed up executions.

It also has one of the highest rates of police shootings in the country. Though there is no central database to track police shootings nationally, an analysis of data from 2013 to 2017 by Mapping Police Violence, an advocacy group that maintains a database of police killings, ranked the Bakersfield Police Department as the fifth deadliest in the country.

Now, at least on paper, California has gone from one of the most secretive states on police shootings to one of the most open. New York, by [contrast](#), strictly limits the amount of information on police shootings that is made public.

Some other states, including Alabama, Georgia and Florida, are more transparent than California, according to research by the American Civil Liberties Union. These states allow open access to a broad range of police files, including disciplinary records of individual officers, and not just those concerned with police shootings.

Other states are more limited. In places like Texas, Kentucky and Utah, police disciplinary records are available only after the department has determined that an officer violated policies, according to the American Civil Liberties Union.

In California, many people are hoping that the new records release law — which applies to videos, investigative reports and disciplinary records of officers involved in shootings — will help stop more killings and provide some comfort for victims' families.

Still, police unions have argued that the law should be applied only to shootings that take place after it was enacted. They say that making all past records public would overwhelm the police with work.

And in a letter to State Senator Nancy Skinner, the author of the law, the chief of the Los Angeles Police Department, Michel Moore, [wrote](#) that if the law were retroactive, "the workload on the men and women of the L.A.P.D. could prove to be well beyond any reasonable expectation given the sheer volume of personnel complaints and uses of force maintained in antiquated or archaic formats."

In addition to officer-involved shootings, the law covers records related to allegations of sexual misconduct and instances of lying by police officers. Unions have argued that it is unfair to now make public disciplinary records from the past, when officers were guaranteed confidentiality.

“Here’s the deal,” said Jacob Kalinski, a lawyer whose firm is representing many police unions in California that are challenging the law. “When you have employment decisions that you are making, that are based on one sort of set of circumstances, the idea is, if you change the circumstances, you’re going to be in a position where you might have made different decisions.”

Mr. Kalinski added, “We think this is unfair from a labor perspective.”

Even as the union lawsuits proceed, some departments have complied with records requests, revealing instances of alleged sexual misconduct by officers that in the past were not publicly reported.

In one [case](#), a police officer in the Bay Area was fired last year for allegedly offering to help a woman who had been charged with D.U.I. in exchange for sex. In [another](#), records revealed that two officers in Watsonville, in the Central Coast, had been fired for having sex with civilians while on duty.

Stephon Clark, an unarmed black man, was shot and killed last year by police officers in Sacramento who [mistook](#) his cellphone for a gun. The case touched off days of protests in California’s capital and captured the attention of the nation, becoming another touchpoint in the country’s emotional reckoning with issues of police of race.

“For us, my brother is gone,” said Stavante Clark, Stephon’s older brother. “Knowing anything new isn’t going to bring him back.”

Still, he said, the law is important to him, “to prevent this from happening again — the cops have been lying since Day 1.”

Earl Ofari Hutchinson, an activist in Los Angeles, was outraged when he learned that the city of Inglewood had begun destroying old records ahead of the law taking effect, which was first [reported](#) by The Los Angeles Times. “The records tell a story,” Mr. Hutchinson said.

He said the new law underscored the distance between California’s image as a liberal bastion and the reality in the state when it comes to police issues.

“Why did California feel the need to pass a law like this in the first place?” Mr. Hutchinson said. “Why was secrecy in police records such a big deal for so long in California? Why, in such a liberal place?”

Inglewood has faced scrutiny for a number of police shootings, including a series in 2008, and Mr. Hutchinson has worked with families to try to get answers about them.

(The mayor of Inglewood, James T. Butts Jr., did not respond to a request for comment for this article. He told The Los Angeles Times that the destruction of the records was routine, and unrelated to the new law.)

One of the people [killed](#) in Inglewood in 2008 was Kevin Wicks, an African-American postal worker. Police officers responded to a domestic disturbance at his home, and found Mr. Wicks with a gun. The officer who shot and killed him had been involved in another shooting just two months before.

Mr. Wick's mother, Donna Hernandez, said she is worried that the records related to the shooting of her son may have already been destroyed. "I can't get any concrete answers," she said.

In Long Beach, the police department had been purging internal-affairs records before the law went into effect, raising [concerns](#) that the department was trying to skirt the law. But the department said the purging was unrelated to the law, and that the city had retained police records, and all records for current employees, for the last 17 years.

Erik Herzog, a commander in the Long Beach department, said the new law posed problems.

"Our union is concerned about it," he said. "I'm concerned about it. You are talking about thousands and thousands and thousands of pages of documents that will take us years to comply with. And we don't have years to comply with that. So that means I have to reallocate where I'm taking people, from other jobs, from the street or from detectives, and get them to start working on these cases."

Peter Bibring, a senior staff attorney for the civil liberties union in Los Angeles who focuses on police matters, said the intent of the law was to apply to all records in the possession of police departments, not just for those generated after the law went into effect on Jan. 1.

Several news outlets in California have [come together](#) to file lawsuits in a bid to protect the law in the face of opposition from the unions. The A.C.L.U., meanwhile, has intervened in the police-union lawsuits, and has been working with families to obtain records.

"They want to find out more as part of the healing process, and in some cases they also want to uncover something that will lead to accountability, or some change in the system," Mr. Bibring said. "So many of the families that have loved ones killed by the police end up working hard to make sure that there's justice for their loved on and that other families don't have to go through what they went through."

California has some of the strictest laws protecting officers from being held accountable for shootings in criminal court. [According to the A.C.L.U.](#), between 2005 and 2016, there were almost 1,200 police-involved killings in California, and in only two cases were the killings determined to be unjustified.

The police records law is one piece of a broader effort to bring more accountability to the police in California.

Activists have also been pushing to loosen the standards to make it easier for criminal charges to be filed against officers for shootings; lawmakers in Sacramento are expected to take up a [new bill](#) with that purpose. The current legal standard to justify shootings by officers requires only that they be deemed "objectively reasonable."

"California's law was written in 1872, and hasn't been amended since," Mr. Bibring said. "It was a law literally written from when this place was the wild Wild West."