



January 29, 2021

The Honorable Philip D. Murphy
Office of the Governor
P.O. Box 001, Trenton, NJ 08625
Constituent.relations@nj.gov

The Honorable Steve Sweeney
Senate Democratic Office
P.O. Box 099 Trenton, NJ, 08625
SENSWEENEY@NJLEG.ORG

The Honorable Craig Coughlin
Assembly Democratic Office
P.O. Box 098 Trenton, NJ 08625
AsmCoughlin@njleg.org

Re: Senate Bill 2656

Dear Governor Murphy, Senate President Sweeney, and Assembly Speaker Coughlin:

On behalf of the National Association of Criminal Defense Lawyers (NACDL), I write to ask you to support Senate Bill 2656, which would make police disciplinary records subject to the Open Public Records Act. NACDL is the preeminent organization advancing the mission of the criminal defense bar to ensure justice and due process for persons accused of crime or wrongdoing. A professional bar association founded in 1958, NACDL's many thousands of direct members in 28 countries – and 90 state, provincial and local affiliate organizations totaling up to 40,000 attorneys – include private criminal defense lawyers, public defenders, military defense counsel, law professors and judges committed to preserving fairness and promoting a rational and humane criminal justice system. Critical to this mission are NACDL's efforts to identify and reform flaws and inequities in the criminal justice system, and specifically address systemic racism and its impact on the administration of justice.



New Jersey is one of 20 states in which police disciplinary records are completely inaccessible to the public. Only internal affairs units within police departments are able to access these records. A New Jersey Supreme Court rule¹ issued in 2009 created a presumption of non-disclosure of police disciplinary records, establishing that the defense can only access misconduct information if they already know about the misconduct. Without any public access to misconduct records, this presumption is nearly impossible to overcome.

Thus, defendants, prosecutors, judges, and juries are usually left in the dark about the officers involved in a case, on whose credibility a defendant's future often rests. Without officer history information, attorneys cannot effectively advise their clients, and defendants cannot raise concerns about an officer's credibility. The state of New Jersey tasks judges and juries with accurately assessing testimony and discerning the truth, and yet will not provide them with critically important information about whether the officers testifying have histories of lying, excessive force, or falsifying reports.

Attorney General Gurbir Grewal recently instituted a policy requiring departments to disclose complaints that resulted in five-day or longer suspensions. While the policy slightly expands transparency, it still allows most officer disciplinary records to remain hidden from public scrutiny. The policy disincentivizes law enforcement agencies from conducting rigorous investigations, identifying misconduct, and holding officers accountable. For the incidents that are publicly accessible under the new policy, records come devoid of key context about the officer's actions, since the policy only requires that the officers' names be disclosed. Knowing the conduct and context attached to these records is far more salient to a criminal case than knowing that an officer was suspended five days or more.

Obscuring law enforcement records from public view means that abusive officers are able to remain in positions of power for decades—and when their long histories of misconduct are revealed, it is the state who must reckon with the wrongful convictions, lawsuits, and profound public distrust in law enforcement left in the officer's wake. For example, New York continues to deal with the damage caused by former Police Department Detective Louis Scarcella, who manufactured evidence, pushed witnesses to provide false identifications, and coerced false

¹ Rules Governing the Courts of the State of New Jersey Rule 1:38;
<https://www.njcourts.gov/attorneys/assets/rules/r1-38.pdf>



confessions. The city and state have thus far paid out over 50 million dollars to 14 individuals whose wrongful convictions were due at least in part to Scarcella's actions.²

The consequences of police record secrecy fall hardest on Black defendants, who are disproportionately impacted by the kinds of cases in which officer testimony is most heavily weighted, like those involving traffic stops³ and drug charges.⁴ According to the New Jersey Criminal Sentencing & Disposition Commission's 2019 Annual Report, racial disparities in New Jersey's criminal legal system are grave—the rate of incarceration for Black people is twelve times the rate of incarceration for white people, the widest disparity of any state in the country.⁵ Until there is meaningful transparency around police records, it will be impossible to know the full extent of police misconduct and abuse in New Jersey, and therefore impossible to pinpoint and address the sources—from vehicle stops, to arrests, to interrogations—of these stark racial disparities.

Passing Senate Bill 2656 this session is the only way to guarantee this urgently needed transparency. The bill, sponsored by Senator Loretta Weinberg (D-Teaneck) and Senator Nia H. Gill (D-Essex), would make police records subject to the New Jersey Open Public Records Act. Records that would be made available include complaints and charges filed against officers, agency factual findings, transcripts and dispositions from disciplinary proceedings, and video recordings of incidents that gave rise to complaints or investigations. Making this information accessible allows for the kind of public accountability that is necessary for a functional system of public safety and justice. The passage of Senate Bill 2656 will allow police departments to remove abusive officers and prevent them from moving to other departments and inflicting the same harms. Accessible data will also create a more complete picture of police departments and can help ascertain appropriate resource allocation and training priorities. Most saliently for NACDL, Senate Bill 2656 will make every stage of the criminal legal process fairer and more just. It will create the transparency and accountability necessary to reduce the incidence of excessive force, manufactured evidence, false confessions, and wrongful convictions. It will allow attorneys to effectively advise their clients and defendants to raise relevant questions about the officers upon whose testimony their case rests. Finally, it will allow judges and juries, who

² The Innocence Project, July 2, 2020; <https://innocenceproject.org/its-time-to-make-police-disciplinary-records-public/>

³ Nature Human Behavior, May 2020; <https://www.nature.com/articles/s41562-020-0858-1?proof=t>

⁴ New Jersey Criminal Sentencing & Disposition Commission Annual Report, November 2019; https://www.njleg.state.nj.us/OPI/Reports_to_the_Legislature/criminal_sentencing_disposition_ar2019.pdf

⁵ New Jersey Criminal Sentencing, November 2019.



must make a life-altering decision about an individual's liberty, to effectively assess the credibility of testifying officers to ensure a fair trial and a just verdict.

For these reasons, we urge you to support Senate Bill 2656.

Sincerely,

Kyle O'Dowd
Associate Executive Director for Policy
National Association of Criminal Defense Lawyers