



California
LEGISLATIVE INFORMATION

AB-66 Peace officers: body-worn cameras. (2015-2016)

AMENDED IN ASSEMBLY MAY 06, 2015
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CALIFORNIA LEGISLATURE— 2015–2016 REGULAR SESSION

ASSEMBLY BILL

No. 66

**Introduced by Assembly Member Weber
 (Principal coauthor: Assembly Member Bonta)
 (Coauthors: Assembly Members Gipson and Rodriguez)**

December 17, 2014

An act to add Section ~~830.16~~ *6254.31* to the Government Code, and to add Sections *830.16*, *830.17*, *830.18*, and *830.19* to the Penal Code, relating to peace officers.

LEGISLATIVE COUNSEL'S DIGEST

AB 66, as amended, Weber. Peace officers: body-worn cameras.

Existing law makes it a crime to intentionally record a confidential communication without the consent of all parties to the communication. Existing law exempts specified peace officers from that provision if they are acting within the scope of their authority.

This bill would impose specified requirements ~~and prohibitions~~ on a law enforcement agency that requires a peace officer employed by the agency to use a body-worn camera, including, among other things, a requirement that the agency conspicuously post its policies and procedures regarding body-worn cameras on its Internet Web site, and a prohibition on a peace officer operating a body worn camera under certain circumstances. ~~The bill would further require that when a peace officer is involved in an incident involving a serious use of force, the officer may only review his or her body worn camera video after making an initial statement and report. The bill would also require those law enforcement agencies to consider specified guidelines when adopting a body worn camera policy, including, among others, a requirement that a peace officer equipped with a body worn camera activate the camera when responding to calls for assistance and when performing law enforcement activities in the field. Except as provided, the bill would specifically require that a request for a file from a body worn camera be processed in accordance with the California Public Records Act. site. The bill would prohibit a peace officer employed by a law enforcement agency that requires a body-worn camera to be used by its peace officers from, among other things, making copies of any body-worn~~

camera files for his or her personal use, or using a recording device such as a telephone camera or secondary video camera to record a body-worn camera file or image. Except as provided, the bill would authorize a peace officer subject to its provisions to review his or her body-worn camera video before making his or her initial statement and report.

This bill would specifically authorize a law enforcement agency that requires a body-worn camera to be used by a peace officer that the agency employs to consider specified model policies when adopting a body-worn camera policy, including, among others, a policy regarding where a peace officer is authorized to position the body-worn camera to facilitate optimum recording field of view.

Existing law, the California Public Records Act, requires state and local agencies to make their records available for public inspection, unless an exemption from disclosure applies.

This bill would exempt specified body-worn camera files created by a peace officer of a state or local law enforcement agency from disclosure pursuant to the act, including, among others, files that depict any victim of rape, incest, domestic violence, or child abuse, if the footage relates to any of those incidents.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

The California Constitution requires local agencies, for the purpose of ensuring public access to the meetings of public bodies and the writings of public officials and agencies, to comply with a statutory enactment that amends or enacts laws relating to public records or open meetings and contains findings demonstrating that the enactment furthers the constitutional requirements relating to this purpose.

This bill would make legislative findings to that effect.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares:

(a) Twenty-first century policing demands more transparency in everyday interactions with the public. In light of a number of high profile use of force incidents involving ~~law-enforcement,~~ *law-enforcement*, body-worn cameras are seen as an important means toward achieving this goal.

(b) Several ~~law-enforcement~~ *law-enforcement* agencies in California are already implementing body-worn camera programs. Because of the potential of this technology to document ~~law-enforcement~~ *law-enforcement* interactions, we must be ~~cognizant in protecting citizen~~ *careful that their use is respectful of individual* privacy and *does* not violate civil liberties.

(c) The development of best practices will be necessary to ensure the public's trust in ~~law-enforcement.~~ *law-enforcement*. The use of ~~the portable video recording system~~ *a body-worn camera* provides documentary evidence for criminal investigations, internal or administrative investigations, and civil litigation.

(d) The Legislature intends that law-enforcement agencies and local governments should periodically review their policies related to the implementation of these requirements and guidelines, to account for changes in technology and the public sentiment, as well as lessons learned and best practices developed throughout the nation.

~~(d)~~

*(e) The Legislature intends for officers to utilize body-worn cameras in accordance with the ~~provisions~~ *requirements* in this act to maximize the effectiveness of the audio and video documentation to achieve operational ~~objectives~~ *objectives*, and to ensure evidence integrity.*

~~SEC. 2. Section 830.16 is added to the Penal Code, to read:~~

~~830.16.(a)A law enforcement agency that requires a body worn camera to be used by a peace officer that the agency employs shall comply with the following requirements:~~

~~(1)A law enforcement agency shall conspicuously post its policies and procedures regarding body worn cameras on its Internet Web site.~~

~~(2)A peace officer shall only use the body worn camera systems issued and approved by the law enforcement agency that employs him or her for official police duties.~~

~~(3)A peace officer shall not make copies of any body worn camera files for his or her personal use or use a recording device such as a telephone camera or secondary video camera to record a body worn camera file.~~

~~(4)A peace officer shall not operate a body worn camera under any of the following circumstances:~~

~~(A)In a health facility or medical office when patients may be in view of the body worn camera or when a health care practitioner is providing care to an individual.~~

~~(B)During an ambulance response to an accident or illness where the victim is not involved in any criminal activity.~~

~~(C)Situations where recording would risk the safety of a confidential informant or undercover peace officer.~~

~~(5)Operation of a body worn camera shall begin with the officer providing on camera notice to a person being recorded that a body worn camera is recording video, and provide the person with the option to request that the body worn camera be turned off under both of the following circumstances:~~

~~(A)When the subject of the video is a victim of rape, incest, domestic violence, or other forms of domestic or sexual harm.~~

~~(B)When an officer is at a private residence without a warrant and in a nonemergency situation.~~

~~(6)(A)When a peace officer is involved in an incident involving a serious use of force, a peace officer may only review his or her body worn camera video after making his or her initial statement and report.~~

~~(B)(i)Once a peace officer's initial report has been submitted and approved, a supervisor may show the peace officer the body worn camera video. The peace officer may be given the opportunity to provide additional information to supplement his or her statement. If the review results in a modified report, both of the reports shall be provided to all parties to a civil, criminal, or administrative investigation. The fact that a modified or secondary report was prepared shall not be the sole basis for placing an officer on a Brady List.~~

~~(ii)For the purposes of this subparagraph, "Brady List" means any system, index, list, or other record containing the names of peace officers whose personnel files are likely to contain evidence of dishonesty or bias, which is maintained by a prosecutorial agency or office in accordance with the holding in Brady v. Maryland (1963) 373 U.S. 83.~~

~~(C)For the purpose of subparagraph (A), "serious use of force" means any of the following:~~

~~(i)Force resulting in death.~~

~~(ii)Force resulting in a loss of consciousness.~~

~~(iii)Force resulting in protracted loss, impairment, serious disfigurement, or function of any body part or organ.~~

~~(iv)Weapon strike to the head.~~

~~(v)Intentional firearm discharge at a person, regardless of injury.~~

~~(vi)Unintentional firearm discharge if a person is injured as a result of the discharge.~~

~~(b)In addition to subdivision (a), a law enforcement agency shall consider the following guidelines when adopting a body worn camera policy:~~

~~(1)A peace officer equipped with a body worn camera shall activate the camera when responding to calls for assistance and when performing law enforcement activities in the field, including, but not limited to, traffic or pedestrian stops, pursuits, arrests, searches, seizures, interrogations, and any other investigative or enforcement encounters in the field.~~

~~(2) A peace officer shall ensure that a body worn camera is fully functional, including, but not limited to, ensuring that the camera can be turned on and off and record video and audio, and that the camera is properly charged, prior to going into the field. A peace officer shall not violate a person's reasonable expectation of privacy when ensuring that a body worn camera is fully functional pursuant to this paragraph.~~

~~(3) A peace officer wearing a body worn camera shall position the camera on his or her chest, head, shoulder, collar, or any area above the mid-torso of his or her uniform to facilitate optimum recording field of view.~~

~~(4) Both video and audio recording functions of a body worn camera shall be activated when an officer is responding to a call for service or at the initiation of any other law enforcement or investigative encounter between a police officer and a member of the public. During an encounter with a member of the public, the officer shall notify the member of the public that the body worn camera is recording, and shall not deactivate the body worn camera until the conclusion of the encounter.~~

~~(5) A peace officer may stop recording when an arrestee is secured inside a fixed place of detention, as defined in paragraph (3) of subdivision (g) of Section 859.5.~~

~~(6) A peace officer shall record any interview of a suspect or witness in its entirety, unless paragraphs (4) and (5) of subdivision (a) apply.~~

~~(7) When recording interviews of a suspect, a peace officer shall, where applicable, inform the suspect of his or her rights under *Miranda v. Arizona* (1966) 384 U.S. 436.~~

~~(8) In the event of contradicting requests made by a homeowner, occupant, or renter to stop recording the encounter, the contradicting requests shall be recorded on video and the peace officer shall continue to operate and record the encounter.~~

~~(9) A peace officer shall not remove, dismantle, or tamper with any hardware or software components or parts of a body worn camera.~~

~~(10) A peace officer shall not use body worn camera functions, when there is no investigatory interaction with a member of the public, to record any personal conversation of or with another agency member or employee without the permission of the recorded member or employee.~~

~~(11) A peace officer shall not use a body worn camera to record non-work-related activity or to record in places where a reasonable expectation of privacy exists.~~

~~(12) A peace officer shall not allow a computerized facial recognition program or application to be used with a body worn camera or a recording made by a body worn camera unless the use has been authorized by a warrant issued by a court.~~

~~(13) When safe and practical, an on-scene supervisor may retrieve a body worn camera from an officer. The supervisor shall be responsible for ensuring the camera data is uploaded into the desired data processing and collection method.~~

~~(c) This section does not require a peace officer, in a public venue, to cease recording an event, situation, or circumstance solely at the demand of a citizen.~~

~~(d)(1) Any request from within a law enforcement agency for recordings from a body worn camera from that agency shall be completed by the system administrator with the approval of the head of the agency.~~

~~(2) All other requests for recordings from a body worn camera shall be processed in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).~~

~~(e) Any use of body worn cameras by a peace officer not otherwise prescribed by this section or any other law is subject to bargaining pursuant to the Myers-Milias-Brown Act (Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 of the Government Code).~~

SEC. 2. *Section 6254.31 is added to the Government Code, to read:*

6254.31. *Body-worn camera files created by a peace officer of a state or local law-enforcement agency that depict the following individuals and situations are confidential and shall not be disclosed to any member of the public pursuant to this chapter:*

(a) Any victim of rape, incest, domestic violence, or child abuse, if the footage relates to any of those incidents.

(b) Any informant of the law-enforcement agency or undercover peace officer.

(c) When a peace officer is at a private residence in a nonemergency situation without a warrant.

SEC. 3. Section 830.16 is added to the Penal Code, to read:

830.16. A law-enforcement agency that requires a body-worn camera to be used by a peace officer that the agency employs shall comply with all of the following requirements:

(a) A law-enforcement agency shall conspicuously post its policies and procedures regarding body-worn cameras on its Internet Web site.

(b) A peace officer shall use only the body-worn camera systems issued and approved by the law-enforcement agency that employs him or her. A peace officer shall use the approved body-worn camera only for official police duties during work hours.

(c) Operation of a body-worn camera shall begin with the officer making a reasonable effort to provide on-camera notice to a person or group of persons being recorded that a body-worn camera is recording video, except where a peace officer is in hot pursuit, where injury is imminent, or during any other emergency situation or exigent circumstance.

(d) (1) (A) A peace officer may review his or her body-worn camera video before making his or her initial statement and report, except where the formal policy of a law-enforcement agency, adopted before January 1, 2016, provides otherwise for situations where a peace officer is involved in an incident involving a serious use of force.

(B) For purposes of this paragraph, "serious use of force" means any of the following:

(i) Force resulting in death.

(ii) Force resulting in a loss of consciousness.

(iii) Force resulting in protracted loss, impairment, serious disfigurement, or function of any body part or organ.

(iv) Weapon strike to the head.

(v) Intentional firearm discharge at a person, regardless of injury.

(vi) Unintentional firearm discharge if a person is injured as a result of the discharge.

(2) (A) If a peace officer is permitted to review his or her body-worn camera video only after making his or her initial statement and report, and the peace officer submits a modified report thereafter, both of the reports shall be provided to all parties to a civil, criminal, or administrative investigation. The fact that a modified or secondary report was prepared shall not be the sole basis for placing a peace officer on a Brady List.

(B) For the purposes of this paragraph, "Brady List" means any system, index, list, or other record containing the names of peace officers whose personnel files are likely to contain evidence of dishonesty or bias, which is maintained by a prosecutorial agency or office in accordance with the holding in *Brady v. Maryland* (1963) 373 U.S. 83.

(e) Any request from within a law-enforcement agency for recordings from a body-worn camera from that agency shall be completed by the system administrator with the approval of the head of the agency. All other requests for recordings from a body-worn camera shall be processed in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), including, but not limited to, Section 6254.31 of the Government Code.

SEC. 4. Section 830.17 is added to the Penal Code, to read:

830.17. (a) A peace officer employed by a law-enforcement agency that requires a body-worn camera to be used by its peace officers shall not do any of the following:

(1) Make copies of any body-worn camera files for his or her personal use, or use a recording device such as a telephone camera or secondary video camera to record a body-worn camera file or image.

(2) Operate a body-worn camera, except in an emergency or other exigent circumstance, under any of the following circumstances:

(A) In a health facility or medical office when patients may be in view of the body-worn camera or when a health care practitioner is providing care to an individual.

(B) During an ambulance response to an accident or illness where the victim is not involved in any criminal activity.

(C) Situations where recording would risk the safety of a confidential informant or undercover peace officer.

(3) Use body-worn camera functions, when there is no investigatory interaction with a member of the public, to record any personal conversation of or with another law-enforcement agency member or employee without the permission of the recorded member or employee.

(4) Use a body-worn camera to record non-work-related activity or to record in places where a reasonable expectation of privacy exists.

(5) Use computerized facial recognition programs or applications with a body-worn camera, or on a recording made by a body-worn camera, unless the use of the program or application has been authorized by a warrant issued by a court.

(6) Use a body-worn camera at a private residence in a nonemergency situation without a warrant if so requested by a homeowner, occupant, or renter. In the event of contradicting requests made by a homeowner, occupant, or renter to stop recording the encounter, the contradicting requests may be recorded on video and the peace officer may continue to operate and record the encounter.

(b) Subject to subparagraph (C) of paragraph (2) of subdivision (a), a peace officer may exercise his or her discretion as to whether or not to operate a body-worn camera when interacting with a confidential informant.

(c) This section does not require a peace officer, in a public venue, to cease recording an event, situation, or circumstance solely at the demand of a citizen.

SEC. 5. Section 830.18 is added to the Penal Code, to read:

830.18. Any use of body-worn cameras by a peace officer not otherwise prescribed by Sections 830.16 and 830.17, or any other law, is subject to bargaining pursuant to the Meyers-Milias-Brown Act (Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 of the Government Code)), and to the Ralph C. Dills Act (Chapter 10.3 (commencing with Section 3512) of Division 4 of Title 1 of the Government Code).

SEC. 6. Section 830.19 is added to the Penal Code, to read:

830.19. A law-enforcement agency that requires a body-worn camera to be used by a peace officer that the agency employs may consider the following model policies when adopting a body-worn camera policy:

(a) A policy that authorizes a peace officer equipped with a body-worn camera to activate the camera when responding to calls for assistance and when performing law-enforcement activities in the field, including, but not limited to, traffic or pedestrian stops, pursuits, arrests, searches, seizures, interrogations, and any other investigative or enforcement encounters in the field.

(b) A policy that authorizes a peace officer to ensure that a body-worn camera is fully functional prior to going into the field in a way that protects a person's reasonable expectation of privacy, including, but not limited to, authorizing the officer to ensure that the camera can be turned on and off and record video and audio, and that the camera is properly charged.

(c) A policy regarding where a peace officer is authorized to position the body-worn camera to facilitate optimum recording field of view, including, but not limited to, on his or her chest, head, shoulder, collar, or any area above the mid-torso of his or her uniform.

(d) A policy regarding which video and audio recording functions of a body-worn camera a peace officer is authorized to activate when an officer is responding to a call for service or at the initiation of any other law-enforcement or investigative encounter between a police officer and a member of the public. The policy may also address whether, during an encounter with a member of the public, the officer is required to notify the member of the public that the body-worn camera is recording, and whether the peace officer is prohibited from deactivating the body-worn camera until the conclusion of the encounter.

(e) A policy that authorizes a peace officer to stop recording if an arrestee is secured inside a fixed place of detention, as defined in paragraph (3) of subdivision (g) of Section 859.5.

(f) A policy that, subject to the restrictions described in subdivision (c) of Section 830.16 and subdivision (b) of Section 830.17, authorizes a peace officer to record any interview of a suspect or witness in its entirety.

*(g) A policy that requires a peace officer, when recording interviews of a suspect, to, where applicable, inform the suspect of his or her rights under *Miranda v. Arizona* (1966) 384 U.S. 436.*

(h) A policy that prohibits a peace officer from removing, dismantling, or tampering with any hardware or software components or parts of a body-worn camera.

(i) A policy that authorizes, when safe and practical, an on-scene supervisor to retrieve a body-worn camera from a peace officer, including but not limited to, authorizing the supervisor to be responsible for ensuring the camera data is uploaded into the desired data processing and collection method.

SEC. 7. *The Legislature finds and declares that Section 2 of this act, which adds Section 6254.31 to the Government Code, imposes a limitation on the public's right of access to the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:*

The need to protect the privacy of victims of serious crimes, the privacy of individuals in their homes, and the identity of confidential police informants and undercover peace officers from the public disclosure of images captured through the use of a body-worn camera outweighs the interest in public disclosure of that information.

SEC. 8. *The Legislature finds and declares that Section 2 of this act, which adds Section 6254.31 to the Government Code, furthers, within the meaning of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the purposes of that constitutional section as it relates to the right of public access to the writings of local public officials and local agencies. Pursuant to paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the Legislature makes the following findings:*

Because body-worn cameras used by peace officers may capture sensitive information that could compromise important police work in addition to information that is highly valuable to the public, requiring local agencies to disclose certain records created through the use of a body-worn camera and maintain the confidentiality of other body-worn camera records furthers the purpose of Section 3 of Article I of the California Constitution.

SEC. 9. *No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district under this act would result from a legislative mandate that is within the scope of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution.*