

BILL ANALYSIS

SENATE COMMITTEE ON PUBLIC SAFETY
 Senator Loni Hancock, Chair
 2015 - 2016 Regular

Bill No: SB 175 Hearing Date: April 14, 2015

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|Author:   |Huff
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|Consultant:|JRD
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Subject: Peace Officers: Body-Worn Cameras.

HISTORY

Source: Author

Prior Legislation:None known

Support: California Peace Officers Association; California
 Police Chiefs Association; California Public Defenders
 Association (support if amended)

Opposition:None known

PURPOSE

The purpose of this legislation is to require every law enforcement department and agency that requires its peace officers to wear body-cameras to develop a policy relating to the use of those cameras, as specified.

Existing law defines "peace officer," as specified (Penal Code § 830, et seq.)

Existing law makes it a crime for a person, intentionally and without requisite consent, to eavesdrop on a confidential

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 communication by means of any electronic amplifying or recording device. (Penal Code § 632.)

Existing law exempts a number of law enforcement agencies from the prohibition in Penal Code section 632,<1> including the Attorney General, any district attorney, or any assistant, deputy, or investigator of the Attorney General or any district attorney, any officer of the California Highway Patrol, any chief of police, assistant chief of police, or police officer of a city or county, any sheriff, undersheriff, or deputy sheriff regularly employed and paid in that capacity by a county, police officer of the County of Los Angeles, or any person acting pursuant to the direction of one of these law enforcement officers acting within the scope of his or her authority. (Penal Code § 633.)

This bill would require each department or agency that employs peace officers and elects to require those officers to wear a body-worn camera to develop a policy relating to the use of those cameras. This policy must be developed in collaboration with non-supervisory officers and include: (1) the duration, time, and place that body-worn cameras must be worn and operational; (2) the length of time video collected by officers will be stored by the department or agency; and (3) the procedures for, and limitations on, public access to recordings taken by body-worn cameras.

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past eight years, this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state's ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its "ROCA" policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

 <1> Penal Code section 633 also exempts listed law enforcement from the prohibitions in sections 631, 632.5, 632.6, and 632.7.

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On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

143% of design bed capacity by June 30, 2014;
 141.5% of design bed capacity by February 28, 2015; and,
 137.5% of design bed capacity by February 28, 2016.

In February of this year the administration reported that as of February 11, 2015, 112,993 inmates were housed in the State's 34 adult institutions, which amounts to 136.6% of design bed capacity, and 8,828 inmates were housed in out-of-state facilities. This current population is now below the court-ordered reduction to 137.5% of design bed capacity." (Defendants' February 2015 Status Report In Response To February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, Coleman v. Brown, Plata v. Brown (fn. omitted).

While significant gains have been made in reducing the prison population, the state now must stabilize these advances and demonstrate to the federal court that California has in place the "durable solution" to prison overcrowding "consistently demanded" by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants' Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, Coleman v. Brown, Plata v. Brown (2-10-14). The Committee's consideration of bills that may impact the prison population therefore will be informed by the following questions:

Whether a proposal erodes a measure which has contributed to reducing the prison population;
 Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;
 Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
 Whether a proposal corrects a constitutional problem or legislative drafting error; and
 Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

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COMMENTS

1.Need for This Bill According to the author:

As pivotal events surrounding police use of force have become the focus of important national debate, it is necessary to explore law enforcement use of body worn camera (BWC) technology as a statewide concern. SB 175 addresses the fact that BWC technology is relatively new and some agencies have started using BWC's without providing comprehensive policies for their use.

BWC technology will only be as effective as its policies and procedures are. Having talked with members of numerous law enforcement agencies, a one-size-fits-all approach is unacceptable. Many agencies have already begun reaching out to community leaders and other agencies to provide policy recommendations regarding privacy rights, data storage and accountability measures.

SB 175 demonstrates an even-handed approach to a serious public safety issue. While it is clear that law enforcement agencies welcome BWC technology for

the good of their departments and the public they serve, it is obvious that subsequent policies will eventually be developed on the natural. This particular Senate bill is an essential forum from which to demonstrate the Legislature's commitment to keeping the discussion focused on the public safety and privacy rights of all citizens, including our peace officers who are tasked with enormous responsibility to protect and to serve, while preserving the public's trust.

According to the Police Executive Research Forum (PERF) 2014, law enforcement agencies that require

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officers to use BWCs, report that the technology definitely improves community relationships by improving the performance of officers as well as the conduct of the community members who are recorded.

Procedural and constitutional privacy concerns must be addressed by carefully crafting thorough departmental policies with the implementation of body camera technology. PERF Executive Director, Chuck Wexler recommends in the 2014 project supported by the US Department of Justice, "Implementing a Body-Worn Camera Program, Recommendations and Lessons Learned, "body-worn cameras can increase accountability, but police agencies also must find a way to preserve the informal and unique relationships between police officers and community members."

2. Effect of the Legislation

A number of law enforcement agencies are currently permitted to utilize body-worn cameras. Existing law, however, does not require these agencies to have a policy prior to utilizing them. The need for such a policy was discussed in a recent study released by the Department of Justice and PERF:

When implemented correctly, body-worn cameras can help strengthen the policing profession. These cameras can help promote agency accountability and transparency, and they can be useful tools for increasing officer professionalism, improving officer training, preserving evidence, and documenting encounters with the public. However, they also raise issues as a practical matter and at the policy level, both of which agencies must thoughtfully examine. Police agencies must determine what adopting body-worn cameras will mean in terms of police-community relationships, privacy, trust and legitimacy, and internal procedural justice for officers.

Police agencies should adopt an incremental approach to implementing a body-worn camera program. This means testing the camera in pilot programs and engaging officers and the community during

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implementation. It also means carefully crafting body-worn camera policies that balance accountability, transparency, and privacy rights, as well as preserving the important relationships that exist between officers and members of the community.

(Miller, Lindsay, Jessica Toliver, and Police Executive Research Forum. 2014. Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned. Washington, DC: Office of Community Oriented Policing Services, page 51; emphasis added.)

The report recommends that each agency develop its own comprehensive written policy to govern body-worn camera usage, that includes the following:

Basic camera usage, including who will be assigned to wear the cameras and where on the body the cameras are authorized to be placed;
The designated staff member(s) responsible for ensuring cameras are charged and in proper working order, for reporting and documenting problems with

cameras, and for reissuing working cameras to avert malfunction claims if critical footage is not captured;

Recording protocols, including when to activate the camera, when to turn it off, and the types of circumstances in which recording is required, allowed, or prohibited;

The process for downloading recorded data from the camera, including who is responsible for downloading, when data must be downloaded, where data will be stored, and how to safeguard against data tampering or deletion;

The method for documenting chain of custody;

The length of time recorded data will be retained by the agency in various circumstances;

The process and policies for accessing and reviewing recorded data, including the persons authorized to access data and the circumstances in which recorded data can be reviewed;

Policies for releasing recorded data to the public, including protocols regarding redactions and responding to public disclosure requests; and

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Policies requiring that any contracts with a third-party vendor for cloud storage explicitly state that the videos are owned by the police agency and that its use and access are governed by agency policy.

(Id. at 37.)

This legislation seeks to implement some of these recommendations, by requiring any agency that utilizes body-worn cameras to have a policy specifying:

The duration, time, and place that body-worn cameras must be worn and operational;

The length of time video collected by officers will be stored by the department or agency; and

The procedures for, and limitations on, public access to recordings taken by body-worn cameras.

The legislation would also require that each officer who has to wear a body-worn camera be provided with a copy of the policies. This legislation, however, does not require an agency to have a policy on (1) officer access to recordings taken by body-worn cameras, or (2) training officers on the use of body-worn cameras.

Officer Access to Recordings Taken by Body-worn Cameras

In addition to the recommendation in the report, a February 26, 2015 letter from the California State Sheriffs' Association underscores the complex nature of officer access to body-worn camera footage:

One particular issue that has seen wide discussion is whether or not law enforcement officers should be allowed to view footage from a body worn camera prior to writing a report and whether such policies should be subject to collective bargaining. In most cases, it would be detrimental to a law enforcement investigation to prohibit officers from viewing video of questioning before writing a report; it would be akin to prohibiting an officer from reviewing field notes before writing a report. However, while law enforcement officers should not be prohibited from

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viewing recorded video before making a report, we would also be concerned about any policies that mandate that management allow employees to watch recorded video in every situation, including situations in which an officer is subject to an investigation involving employee or criminal misconduct.

Members may wish to consider whether agencies should also be required to develop a policy specifying the process for accessing and reviewing recorded data, including the persons authorized to access data and the circumstances in which

recorded data can be reviewed.

Training Officers on the use of Body-worn Cameras

The DOJ and the PERF report recommend that before agency personnel are equipped with body-worn cameras, they receive training on:

- All practices and protocols covered by the agency's body-worn camera policy (which should be distributed to all personnel during training);

- An overview of relevant state laws governing consent, evidence, privacy, and public disclosure;

- Procedures for operating the equipment safely and effectively;

- Scenario-based exercises that replicate situations that officers might encounter in the field;

- Procedures for downloading and tagging recorded data;

- Procedures for accessing and reviewing recorded data (only for personnel authorized to access the data);

- Procedures for preparing and presenting digital evidence for court; and

- Procedures for documenting and reporting any malfunctioning device or supporting system;

(Implementing a Body-Worn Camera Program, Supra, at 47-48.)

Members may wish to consider whether agencies should be required

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to develop a policy specifying what training will be provided on the use of body-worn cameras.

3. Argument in Support

According to the California Police Chiefs Association:

SB 175 would require every agency that employs peace officers and that elects to requires those peace officers to wear body-worn cameras to develop a policy relating to the use of body-worn cameras. We concur that agencies that elect to utilize body worn cameras should have an includes and vetted policy in place prior to the implementation of the agency's body worn camera program.

SB 175 allows for local discretion in the creation of agency policies. This approach allows each agency to develop and implement the best policy for their department and community.

-- END --