

Date of Hearing: April 21, 2016

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION

Ed Chau, Chair

AB 1940 (Cooper) – As Amended April 14, 2016

SUBJECT: Peace officers: body-worn cameras: policies and procedures

SUMMARY: Requires law enforcement agencies, departments or entities to develop a policy for peace officer use of body-worn cameras, makes that policy subject to collective bargaining, and requires that the policy allow a peace officer to review camera footage before making a report or statement. Specifically, **this bill:**

- 1) Requires a law enforcement agency, department, or entity that provides body-worn cameras to its peace officers to develop a policy relating to the use of those cameras.
- 2) Requires the policy to allow, but not require, a peace officer to review his or her body-worn camera video and audio recordings before he or she makes a report, is ordered to give an internal affairs statement, or before any criminal or civil proceeding.
- 3) Requires that the policy be developed in accordance with the Meyers-Milias-Brown Act and the Ralph C. Dills Act, pertaining to the collective bargaining rights of peace officers.
- 4) Encourages law enforcement agencies, departments, or entities to address the following issues in developing the policy:
 - a) The time, place, circumstances, and duration in which the body-worn camera shall be operational;
 - b) Which peace officers shall wear the body-worn camera and when they shall wear it;
 - c) Any prohibitions against the use of body-worn camera equipment and footage in specified circumstances, such as when the peace officer is off-duty;
 - d) The type of training and length of training required for body-worn camera usage;
 - e) Public notification of field use of body-worn cameras, including the circumstances in which citizens are to be notified that they are being recorded;
 - f) The manner in which to document a citizen's refusal from being recorded under certain circumstances;
 - g) The use of body-worn camera video and audio recordings in internal affairs cases;
 - h) The use of body-worn camera video and audio recordings in criminal and civil case preparation and testimony; and,
 - i) The transfer and use of body-worn camera video and audio recordings to other law enforcement agencies, including establishing what constitutes a need-to-know basis and what constitutes a right-to-know basis.

- 5) Encourages law enforcement agencies, departments, or entities to include the following provisions in developing the policy:
 - a) The policy may be available to all peace officers in a written form.
 - b) The policy may be available to the public for viewing.
- 6) Defines the terms "body-worn camera" and "police officer."

EXISTING LAW:

- 1) Generally requires, pursuant to the California Public Records Act (CPRA), that public agencies disclose a government record to the public upon request, unless there is a specific reason to withhold it or if a public agency can establish that the public interest in nondisclosure clearly outweighs the public interest in disclosure. (Government Code (GC) Section 6250, *et seq.*)
- 2) Provides, pursuant to the Public Safety Officers Procedural Bill of Rights Act, a variety of employment rights and remedies for all public safety officers within California. (GC 3300, *et seq.*)
- 3) Provides, pursuant to the Meyers-Miliias-Brown Act, for the organization of and collective bargaining by employees of local governments. (GC 3500, *et seq.*)
- 4) Provides, pursuant to the Ralph C. Dills Act, for the organization of and collective bargaining by employees of state governments. (GC 3512, *et seq.*)

FISCAL EFFECT: Unknown**COMMENTS:**

- 1) Purpose of this bill. This bill is intended to establish certain rights for peace officers that use body-worn cameras while on duty, including the right to review camera footage before making a report and the right to have a formal policy regarding body-worn camera use subject to collective bargaining. This bill is sponsored by the Peace Officers Research Association of California (PORAC).
- 2) Author's statement. According to the author, "AB 1940 requires law enforcement agencies to develop, through the collective bargaining process, policies and procedures on the use of body worn cameras (BWC). Additionally, the bill authorizes officer review of BWC footage and recommends best practices for law enforcement to consider when establishing policies."
- 3) The use of body-worn cameras in law enforcement. As a result of a string of well-publicized incidents involving the use of force by law enforcement officers against African-American men, beginning with the shooting of Michael Brown in Ferguson, Missouri on August 9, 2014, a public debate has emerged over the use of body-worn cameras by peace officers. According to the National Conference of State Legislatures, there are no fewer than 30 states currently considering some form of legislation on the topic.

A body-worn camera is a small video camera – typically attached to an officer's clothing, helmet or sunglasses – that can capture, from an officer's point of view, video and audio

recordings of activities, including traffic stops, arrests, searches, interrogations, and critical incidents such as officer-involved shootings.

There is substantial evidence to suggest that body-worn cameras can have positive effects on policing. A 2012 study of the Rialto, CA police department's use of body-worn cameras found that the devices were correlated with a 60% reduction in officer use of force incidents following camera deployment, with twice the number of use of force incidents reported among the group of officers without cameras. The report also found an 88% reduction in the number of citizens' complaints in the year after cameras were introduced. To explain the effect of body-worn cameras, the Rialto Chief of Police was quoted as saying, "Whether the reduced number of complaints was because of the officers behaving better or the citizens behaving better – well, it was probably a little bit of both."

According to a November 2014 report by the U.S. Department of Justice's Office of Community Oriented Policing Services and the Police Executive Research Forum (PERF), a broad survey of police departments that had deployed body-worn cameras found a number of benefits: "body-worn cameras are useful for documenting evidence; officer training; preventing and resolving complaints brought by members of the public; and strengthening police transparency, performance and accountability...body-worn cameras [also] help police departments ensure events are also captured from an officer's perspective." However, the report also notes that "[t]he use of body-worn cameras also raises important questions about privacy and trust."

- 4) This bill in practice. As noted above, this bill does three things: requires the creation of a body-worn camera policy (with some recommendations), requires that the policy be subject to collective bargaining, and requires that officers have the opportunity to review their own camera footage before submitting a report or statement, or prior to a legal proceeding.
- 5) Collective bargaining and officer review of camera footage. Existing law permits state and local public safety employees to organize and bargain collectively over matters such as working conditions.

According to the author, "Many law enforcement agencies deploying BWC's have already addressed the issue of officer review through the collective bargaining process. Some, such as the California Highway Patrol, are currently in the collective bargaining process on BWC policy. In research, most of these agreements on officer review have given the officer full view of BWC data before the officer writes the 'initial' report, before court preparation/testimony, and in internal affairs investigations. Other agencies give unspecified and specified latitude to management having final say but maintain officer review. Oakland Police Department (OPD) is routinely cited for not giving officers initial review. However, OPD is currently under consent decree and is bound by policies imposed upon it outside of the collective bargaining process."

The author contends, "AB 1940 will ensure that law enforcement management and labor work in concert to develop BWC policy so the mission of the department is met as well as the working conditions of the employee."

- 6) The debate over whether to permit officer review. According to a 2014 PERF report entitled "Implementing a Body-Worn Camera Program – Recommendations and Lessons Learned,"

there are differing views as to whether officers should be allowed to review camera footage prior to making a statement about an incident in which they were involved.

"According to many police executives, the primary benefit to officer review is that it allows officers to recall events more clearly, which helps get to the truth of what really happened. Some police executives, on the other hand, said that it is better for an officer's statement to reflect what he or she perceived during the event, rather than what the camera footage revealed. The majority of police executives consulted by PERF are in favor of allowing officers to review body-worn camera footage prior to making a statement about an incident in which they were involved. They believe that this approach provides the best evidence of what actually took place."

"Police executives who favor review said that officers will be held accountable for their actions regardless of whether they are allowed to watch the video recordings prior to making a statement. 'Officers are going to have to explain their actions, no matter what the video shows,' said Chief Burbank of Salt Lake City. Chief Frazier of Surprise, Arizona, said, 'If an officer has acted inappropriately, and those actions were recorded, the officer cannot change the record and will have to answer for his or her actions. What will be gained by a review of the video is a more accurate accounting of the incident.'

"Other police executives, however, said that the truth—and the officer's credibility—are better served if an officer is not permitted to review footage of an incident prior to making a statement. 'In terms of the officer's statement, what matters is the officer's perspective at the time of the event, not what is in the video,' said Major Mark Person of the Prince George's County (Maryland) Police Department. 'That perspective is what they are going to have to testify to. If officers watch the video before making a statement, they might tailor the statement to what they see. It can cause them to second-guess themselves, which makes them seem less credible.'"

The author's office points out that it is an established precedent in California that officers can review video footage from dashboard cameras mounted in police cars prior to drafting a report or statement, and that this bill would be an extension of that precedent.

- 7) Recent amendments. According to the author's office, an agreement in concept has been reached with the Assembly Public Safety Committee to narrow the officer review provision slightly by requiring the review of an unvalidated recording to be supervised by an independent investigator or supervisor for incidents involving a serious use of force, as defined. Because of the approaching policy committee deadline, the author's office has committed to making those amendments in the Assembly Appropriations Committee, should the bill be passed by this Committee.
- 8) Arguments in support. According to the sponsor, "PORAC supports the use of body worn camera when they are implemented and used responsibly. With the addition of a body worn camera policy that would require an officer to view the footage prior to making a statement, we believe that the reports and conclusions will be more detailed, relevant and inherently more accurate. The other important aspect of this bill is that all of these policies and procedures are collectively bargained."

- 9) Arguments in opposition. According to the American Civil Liberties Union of California, "[t]his bill would potentially hide critical evidence of wrongdoing by police officers for years after an incident by creation an unprecedented prohibition against disclosure of public records taken by body-worn cameras (BWCs) when those recordings depict the use of force resulting in serious injury or death. This bill would further require that every police department allow a peace officer to review BWC recordings before he or she makes a report, gives an internal affairs statement, or testifies in any criminal or civil proceeding. Creating such a right would seriously undermine effective investigation and fair determination of alleged misconduct."
- 10) Related legislation. AB 2533 (Santiago) would require that a public safety officer be given a minimum of three business days' notice before any audio or video data of the officer that was recorded by the officer may be publicly released by the department or other public agency on the Internet. AB 2533 is currently pending in the Assembly Appropriations Committee.

AB 1957 (Quirk) would require a law enforcement agency to confidentially review body worn camera from serious use of force incidents and require a judicial determination to set the terms of any public release of such footage, while generally requiring the disclosure of footage 60 days after the commencement of a misconduct investigation and restricting the public disclosure of footage depicting domestic violence victims, minors, or witness statements. AB 1957 is currently pending in the Assembly Appropriations Committee.

AB 2611 (Low) would exempt from disclosure under the CPRA records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice, the Office of Emergency Services and any state or local police agency, or any investigatory or security files, including audio or video recordings, compiled by any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes. AB 2611 is currently pending in the Assembly Appropriations Committee.

- 11) Previous legislation. AB 66 (Weber) would have imposed specified requirements on a law enforcement agency that requires its officers to use body worn cameras, including a requirement that the policies and procedures being posted online, that peace officers be banned from making personal copies of video footage, that officers be allowed to review their own footage before making an initial statement and report, and exempt footage depicting sexual or domestic violence victims from public disclosure. This bill was held in the Assembly Appropriations Committee.

AB 69 (Rodriguez), Chapter 461, Statutes of 2015, requires law enforcement agencies to consider specified best practices when establishing policies and procedures for downloading and storing data from body-worn cameras.

AB 1246 (Quirk) would prohibit the disclosure of a recording made by a body-worn camera, except to the person whose image is recorded by the body worn camera. AB 1246 died in Assembly Public Safety Committee.

SB 175 (Huff) would require each department or agency that employs peace officers and that elects to require those peace officers to wear body-worn cameras to develop a policy relating

to the use of body-worn cameras. SB 175 is currently on the inactive file on the Assembly Floor.

SB 195 (Anderson) would state the intent of the Legislature to enact legislation that protects the privacy of individuals recorded by body-worn cameras utilized by law enforcement officers and the privacy of the officers wearing these cameras. SB 195 died in the Senate Rules Committee.

12) Double-referral. This bill was double-referred to the Assembly Public Safety Committee, where it was heard on April 20, 2016.

REGISTERED SUPPORT / OPPOSITION:

Support

Peace Officers Research Association of California (PORAC) (sponsor)
Association for Los Angeles Deputy Sheriffs
Los Angeles Police Protective League
Los Angeles County Deputy Probation Officers Union, AFSCME, Local 685
Riverside Sheriffs Association

Opposition

American Civil Liberties Union of California

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