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AGENDA REPORT

TO: Sabrina B. Landreth
CITY ADMINISTRATOR

FROM: Sean Whent

SUBJECT: Memo re: SB411

DATE: July 17, 2015

City Administrator
Approval

Date

7/23/15

COUNCIL DISTRICT: City-Wide

RECOMMENDATION

Staff recommends:

Adoption of a Resolution Affirming the Right to Photograph, Video and/or Audio Record Police and/or Peace Officers.

REASON FOR SUPPLEMENTAL

At the July 14, 2015 Public Safety Committee, OPD was directed to provide a memo on the status of Senate Bill 411 (SB411). SB411 seeks to amend section 69 of the California Penal Code to read as follows:

(a) Every person who attempts, by means of any threat or violence, to deter or prevent an executive officer from performing any duty imposed upon the officer by law, or who knowingly resists, by the use of force or violence, the officer, in the performance of his or her duty, is punishable by a fine not exceeding ten thousand dollars (\$10,000), or by imprisonment pursuant to subdivision (h) of Section 1170, or in a county jail not exceeding one year, or by both such fine and imprisonment.

(b) The fact that a person takes a photograph or makes an audio or video recording of an executive officer, while the officer is in a public place or the person taking the photograph or making the recording is in a place he or she has the right to be, does not constitute, in and of itself, a violation of subdivision (a).

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SB411 also seeks to add the following language to section 148 of the California Penal Code:

(g) The fact that a person takes a photograph or makes an audio or video recording of a public officer or peace officer, while the officer is in a public place or the person taking the photograph or making the recording is in a place he or she has the right to be, does not constitute, in and of itself, a violation of subdivision (a), nor does it constitute reasonable suspicion to detain the person or probable cause to arrest the person.

Subdivision (a) of section 148 states:

(a) (1) Every person who willfully resists, delays, or obstructs any public officer, peace officer, or an emergency medical technician, as defined in Division 2.5 (commencing with Section 1797) of the Health and Safety Code, in the discharge or attempt to discharge any duty of his or her office or employment, when no other punishment is prescribed, shall be punished by a fine not exceeding one thousand dollars (\$1,000), or by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment.

SB411 has passed the California Senate and Assembly. The full text of SB411 is provided as ***Attachment A***.

For questions regarding this report, please contact Timothy Birch, OPD Research and Planning Manager, at 510-238-6443.

Respectfully submitted,



Chief Sean Whent

Prepared by:
Timothy Birch, Police Services Manager I
Research and Planning

Attachment A: AB 411

Item: _____
Public Safety Committee
July 28, 2015

Introduced by Senator Lara

February 25, 2015

An act to amend Sections 69 and 148 of the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

SB 411, as introduced, Lara. Crimes.

Under existing law, every person who deters or prevents an executive officer from performing any of his or her duties, or knowingly resists the officer, is punishable by a fine or imprisonment, or both, as specified.

This bill would provide that the fact that a person takes a photograph or makes an audio or video recording of an executive officer, while the officer is in a public place or the person taking the photograph or making the recording is in a place he or she has the right to be, is not, in and of itself, a violation of the above-mentioned provision.

Under existing law, every person who willfully resists, delays, or obstructs any public officer, peace officer, or emergency medical technician in the discharge or attempt to discharge any of his or her duties shall be punished by a fine or imprisonment, or both, as specified.

This bill would provide that the fact that a person takes a photograph or makes an audio or video recording of a public officer or peace officer, while the officer is in a public place or the person taking the photograph or making the recording is in a place he or she has the right to be, is not, in and of itself, a violation of the above-mentioned provision, nor does it constitute reasonable suspicion to detain the person or probable cause to arrest the person.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 69 of the Penal Code is amended to read:

2 69. (a) Every person who attempts, by means of any threat
3 or violence, to deter or prevent an executive officer from
4 performing any duty imposed upon ~~such~~ *the* officer by law, or who
5 knowingly resists, by the use of force or violence, ~~such~~ *the* officer,
6 in the performance of his *or her* duty, is punishable by a fine not
7 exceeding ten thousand dollars (\$10,000), or by imprisonment
8 pursuant to subdivision (h) of Section 1170, or in a county jail not
9 exceeding one year, or by both such fine and imprisonment.

10 (b) *The fact that a person takes a photograph or makes an audio*
11 *or video recording of an executive officer, while the officer is in*
12 *a public place or the person taking the photograph or making the*
13 *recording is in a place he or she has the right to be, does not*
14 *constitute, in and of itself, a violation of subdivision (a).*

15 SEC. 2. Section 148 of the Penal Code is amended to read:

16 148. (a) (1) Every person who willfully resists, delays, or
17 obstructs any public officer, peace officer, or an emergency medical
18 technician, as defined in Division 2.5 (commencing with Section
19 1797) of the Health and Safety Code, in the discharge or attempt
20 to discharge any duty of his or her office or employment, when
21 no other punishment is prescribed, shall be punished by a fine not
22 exceeding one thousand dollars (\$1,000), or by imprisonment in
23 a county jail not to exceed one year, or by both that fine and
24 imprisonment.

25 (2) Except as provided by subdivision (d) of Section 653t, every
26 person who knowingly and maliciously interrupts, disrupts,
27 impedes, or otherwise interferes with the transmission of a
28 communication over a public safety radio frequency shall be
29 punished by a fine not exceeding one thousand dollars (\$1,000),
30 imprisonment in a county jail not exceeding one year, or by both
31 that fine and imprisonment.

32 (b) Every person who, during the commission of any offense
33 described in subdivision (a), removes or takes any weapon, other
34 than a firearm, from the person of, or immediate presence of, a
35 public officer or peace officer shall be punished by imprisonment
36 in a county jail not to exceed one year or pursuant to subdivision
37 (h) of Section 1170.

1 (c) Every person who, during the commission of any offense
2 described in subdivision (a), removes or takes a firearm from the
3 person of, or immediate presence of, a public officer or peace
4 officer shall be punished by imprisonment pursuant to subdivision
5 (h) of Section 1170.

6 (d) Except as provided in subdivision (c) and notwithstanding
7 subdivision (a) of Section 489, every person who removes or takes
8 without intent to permanently deprive, or who attempts to remove
9 or take a firearm from the person of, or immediate presence of, a
10 public officer or peace officer, while the officer is engaged in the
11 performance of his or her lawful duties, shall be punished by
12 imprisonment in a county jail not to exceed one year or pursuant
13 to subdivision (h) of Section 1170.

14 In order to prove a violation of this subdivision, the prosecution
15 shall establish that the defendant had the specific intent to remove
16 or take the firearm by demonstrating that any of the following
17 direct, but ineffectual, acts occurred:

18 (1) The officer's holster strap was unfastened by the defendant.

19 (2) The firearm was partially removed from the officer's holster
20 by the defendant.

21 (3) The firearm safety was released by the defendant.

22 (4) An independent witness corroborates that the defendant
23 stated that he or she intended to remove the firearm and the
24 defendant actually touched the firearm.

25 (5) An independent witness corroborates that the defendant
26 actually had his or her hand on the firearm and tried to take the
27 firearm away from the officer who was holding it.

28 (6) The defendant's fingerprint was found on the firearm or
29 holster.

30 (7) Physical evidence authenticated by a scientifically verifiable
31 procedure established that the defendant touched the firearm.

32 (8) In the course of any struggle, the officer's firearm fell and
33 the defendant attempted to pick it up.

34 (e) A person shall not be convicted of a violation of subdivision
35 (a) in addition to a conviction of a violation of subdivision (b), (c),
36 or (d) when the resistance, delay, or obstruction, and the removal
37 or taking of the weapon or firearm or attempt thereof, was
38 committed against the same public officer, peace officer, or
39 emergency medical technician. A person may be convicted of

1 multiple violations of this section if more than one public officer,
2 peace officer, or emergency medical technician are victims.

3 (f) This section shall not apply if the public officer, peace
4 officer, or emergency medical technician is disarmed while engaged
5 in a criminal act.

6 (g) *The fact that a person takes a photograph or makes an audio*
7 *or video recording of a public officer or peace officer, while the*
8 *officer is in a public place or the person taking the photograph or*
9 *making the recording is in a place he or she has the right to be,*
10 *does not constitute, in and of itself, a violation of subdivision (a),*
11 *nor does it constitute reasonable suspicion to detain the person*
12 *or probable cause to arrest the person.*

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