

---

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.*

**FILED**  
OFFICE OF THE CITY CLERK  
OAKLAND

City Attorney's Office

**2015 APR 30 PM 5:10** **OAKLAND CITY COUNCIL**

Resolution No. \_\_\_\_\_ C.M.S.

INTRODUCED BY COUNCIL PRESIDENT LYNETTE GIBSON MCELHANEY

**RESOLUTION TO SUPPORT CALIFORNIA SENATE BILL WHICH CLARIFIES IN STATE LAW THAT RECORDING OR PHOTOGRAPHING PUBLIC SAFETY OFFICERS IN THE COURSE OF THEIR DUTIES DOES NOT CONSTITUTE OBSTRUCTION OF AN OFFICER, THAT RECORDING DOES NOT CONSTITUTE REASONABLE SUSPICION OR PROBABLE CAUSE TO ARREST, AND REAFFIRMS FIRST AMENDMENT RIGHTS.**

**WHEREAS**, in California and around the country, a number of individuals have been arrested or threatened by arrest for using mobile devices to film or record law enforcement activity; and

**WHEREAS**, existing law prohibits persons from engaging in obstruction of a police officer in his or her course of duty, however, it does not distinguish or specifically clarify that recording or photographing activity of such personnel does not constitute obstruction; and

**WHEREAS**, technological advances in mobile phones and tablets have provided greater access to photography and video recording devices, and in several cases, cell phone footage taken by ordinary citizens has captured footage of crimes as well as law enforcement activity which has been used as evidence in court proceedings; and

**WHEREAS**, Senate Bill 411, authored by Senator Ricardo Lara, clarifies an individual's First Amendment Rights by inserting language in California State Law to denote that recording the actions of law enforcement personnel does not constitute obstruction nor does such recording constitute suspicion to detain or arrest an individual; and now therefore be it

**RESOLVED:** that the City Council of Oakland strongly supports the passage of Senate Bill 411.

IN COUNCIL, OAKLAND, CALIFORNIA,  
PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, CAMPBELL-WASHINGTON, GALLO, GUILLEN, KALB, KAPLAN, REID AND  
PRESIDENT GIBSON MCELHANEY

NOES -  
ABSENT -  
ABSTENTION -

ATTEST:

\_\_\_\_\_  
LATONDA SIMMONS  
City Clerk and Clerk of the Council of the  
City of Oakland, California